5–21–99
Vol. 64 No. 98
Pages 27657–27898

Federal Register

Friday
May 21, 1999

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Notice to Readers:

This issue of the *Federal Register* is accompanied by a separately published supplement that corrects and republishes the Department of Health and Human Services' Semiannual Agenda of Federal Regulatory and Deregulatory Actions, April 26, 1999. It replaces in full pages 21196-21301 which were originally published as part VIII of the April 26, 1999 issue of the *Federal Register*.

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–125–1]

Imported Fire Ant; Quarantined Areas and Treatment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the imported fire ant regulations by designating as quarantined areas all or portions of three counties in California, two counties in Georgia, one county in New Mexico, four counties in North Carolina, and one county in Tennessee. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States. We are also amending the treatment provisions in the Appendix to the imported fire ant regulations by removing all references to the granular formulation of chlorpyrifos because this formulation is no longer marketed for treating grass sod or woody ornamentals.

DATES: This interim rule is effective May 21, 1999. We invite you to comment on this docket. We will consider all comments that we receive by July 20, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–125–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 98–125–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–5255; or e-mail: ron.p.milberg@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10, and referred to below as the regulations) quarantine infested States or infested areas within States and impose restrictions on the interstate movement of certain regulated articles for the purpose of preventing the artificial spread of the imported fire ant.

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery. The imported fire ant is not native to the United States. The purpose of the regulations is to prevent the imported fire ant from spreading throughout its ecological range within this country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the artificial spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

We are amending § 301.81–3(e) by designating all or portions of the following counties as quarantined areas: Los Angeles, Orange, and Riverside Counties in California; Habersham and White Counties in Georgia; Dona Ana County in New Mexico; Bertie, Chowan, Martin, and Perquimans Counties in North Carolina; and Madison County in Tennessee. We are taking this action because recent surveys conducted by APHIS and State and county agencies reveal that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new quarantined areas.

We are also revising one of the treatments described in the regulations. Sections 301.81–4 and 301.81–5 of the regulations provide, among other things, that regulated articles requiring treatment before interstate movement must be treated in accordance with the methods and procedures prescribed in the Appendix to the imported fire ant regulations. The Appendix sets forth the treatment provisions of the ''Imported Fire Ant Program Manual.'' We are amending paragraphs III.C.5. and III.C.8. of the Appendix by removing all references to the word ''granular'' before the word ''chlorpyrifos.'' This is necessary because the granular formulation of chlorpyrifos is no longer marketed for treating grass sod and woody ornamentals.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the artificial spread of the imported fire ant into noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions,

we find good cause under 5 U.S.C. 553 to make this action effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the imported fire ant regulations by designating as quarantined areas all or portions of three counties in California, two counties in Georgia, one county in New Mexico, four counties in North Carolina, and one county in Tennessee. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary on an emergency basis to prevent the artificial spread of the imported fire ant to noninfested areas of the United States. We are also amending the Appendix to the imported fire ant regulations by removing all references to the word ''granular'' before the word ''chlorpyrifos'' because the granular formulation is no longer marketed for treating grass sod or woody ornamentals.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this program. The assessment provides a basis for the conclusion that the methods employed to regulate the imported fire ant will not significantly affect the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.81–3, paragraph (e), the list of quarantined areas is amended as follows:

a. By adding an entry for California and a list of quarantined areas, in alphabetical order, for Los Angeles, Orange, and Riverside Counties to read as set forth below;

b. By adding, in alphabetical order, entries for Habersham and White Counties in Georgia to read as set forth below;

c. By adding, in alphabetical order, an entry for New Mexico and Dona Ana County to read as set forth below;

d. By adding, in alphabetical order, entries for Bertie, Chowan, and Perquimans Counties in North Carolina and by revising the entry for Martin County in North Carolina to read as set forth below; and

e. By adding, in alphabetical order, an entry for Madison County in Tennessee to read as set forth below.

§ 301.81–3 Quarantined areas.

* * * * *

(e) * * *

* * * * *

California

Los Angeles County. That portion of Los Angeles County in the Cerritos area bounded by a line beginning at the intersection of Artesia Boulevard and Marquardt Avenue; then south along Marquardt Avenue to the Los Angeles/Orange County Line; then south and west along the Los Angeles/Orange County Line to Carson Street; then west along Carson Street to Norwalk Boulevard; then north along Norwalk Boulevard to Centralia Street; then west along Centralia Street to Pioneer Boulevard; then north along Pioneer Boulevard to South Street; then east along South Street to Norwalk Boulevard; then north along Norwalk Boulevard to 183rd Street; then east along 183rd Street to Bloomfield Avenue; then north along Bloomfield Avenue to Artesia Boulevard; then east along Artesia Boulevard to the point of beginning.

Orange County. The entire county.

Riverside County. That portion of Riverside County in the Indio area bounded by a line beginning at the intersection of Avenue 50 and Jackson Street; then south along Jackson Street to 54th Avenue; then west along 54th Avenue to Madison Street; then north along Madison Street to Avenue 50; then east along Avenue 50 to the point of beginning.

That portion of Riverside County in the Moreno Valley area bounded by a line beginning at the intersection of Reche Vista Drive and Canyon Ranch

Road; then southeast along Canyon Ranch Road to Valley Ranch Road; then east along Valley Ranch Road to Michael Way; then south along Michael Way to Casey Court; then east along Casey Court to the Moreno Valley City Limits; then south and east along the Moreno Valley City Limits to Pico Vista Way; then southwest along Pico Vista Way to Los Olivos Drive; then south along Los Olivos Drive to Jaclyn Avenue; then west along Jaclyn Avenue to Perris Boulevard; then south along Perris Boulevard to Kalmia Avenue; then west along Kalmia Avenue to Hubbard Street; then north along Hubbard Street to Nightfall Way; then west and south along Nightfall Way to Sundial Way; then west along Sundial Way to Indian Avenue; then south along Indian Avenue to Ebbtide Lane; then west along Ebbtide Lane to Ridgecrest Lane; then south along Ridgecrest Lane to Moonraker Lane; then west along Moonraker Lane to Davis Street; then south along Davis Street to Gregory Lane; then west along Gregory Lane to Heacock Street; then northwest along an imaginary line to the intersection of Lake Valley Drive and Breezy Meadow Drive; then north along Breezy Meadow Drive to its intersection with Stony Creek; then north along an imaginary line to the intersection of Old Lake Drive and Sunnymead Ranch Parkway; then northwest along Sunnymead Ranch Parkway to El Granito Street; then east along El Granito Street to Lawless Road; then east along an imaginary line to the intersection of Heacock Street and Reche Vista Drive; then north along Reche Vista Drive to the point of beginning.

That portion of Riverside County in the Bermuda Dunes, Palm Desert, and Rancho Mirage areas bounded by a line beginning at the intersection of Ramon Road and Bob Hope Drive; then south along Bob Hope Drive to Dinah Shore Drive; then east along Dinah Shore Drive to Key Largo Avenue; then south along Key Largo Avenue to Gerald Ford Drive; then west along Gerald Ford Drive to Bob Hope Drive; then south along Bob Hope Drive to Frank Sinatra Drive; then east along Frank Sinatra Drive to Vista Del Sol; then south along Vista Del Sol to Country Club Drive; then east along Country Club Drive to Adams Street; then south along Adams Street to 42nd Avenue; then east along 42nd Avenue to Tranquillo Place; then south along Tranquillo Place to its intersection with Harbour Court; then southwest along an imaginary line to the intersection of Granada Drive and Caballeros Drive; then southeast along Caballeros Drive to Kingston Drive; then west along Kingston Drive to Mandeville Road; then east along Mandeville Road to Port Maria Road; then south along Port Maria Road to Fred Waring Drive; then west along Fred Waring Drive to its intersection with Dune Palms Road; then southwest along an imaginary line to the intersection of Adams Street and Miles Avenue; then west along Miles Avenue to Washington Street; then northwest along Washington Street to Fred Waring Drive; then west along Fred Waring Drive to Joshua Road; then north along Joshua Road to Park View Drive; then west along Park View Drive to State Highway 111; then northwest along State Highway 111 to Magnesia Fall Drive; then west along Magnesia Fall Drive to Gardess Road; then northwest along Gardess Road to Dunes View Road; then northeast along Dunes View Road to Halgar Road; then northwest along Halgar Road to Indian Trail Road; then northeast along Indian Trail Road to Mirage Road; then north along Mirage Road to State Highway 111; then northwest along State Highway 111 to Frank Sinatra Drive; then west along Frank Sinatra Drive to Da Vall Drive; then north along Da Vall Drive to Ramon Road; then east along Ramon Road to the point of beginning.

* * * * *

Georgia

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Habersham County. The entire county.

* * * * *

White County. The entire county.

* * * * *

New Mexico

Dona Ana County. The entire county.

North Carolina

* * * * *

Bertie County. That portion of the county beginning at the intersection of U.S. Highway 17 North by-pass and the Bertie/Martin County line; then north along U.S. Highway 17 North by-pass to U.S. Highway 13 Business; then north along U.S. Highway 13 Business to State Road 1301; then northeast along State Road 1301 to State Highway 45; then east along State Highway 45 to State Road 1360; then east along State Road 1360 to the Bertie/Chowan County line; then south along the Bertie/Chowan County line to the Bertie/Washington County line; then southwest along the Bertie/Washington County line to the Bertie/Martin County line; then west along the Bertie/Martin County line to the point of beginning.

* * * * *

Chowan County. That portion of the county lying south of U.S. Highway 17.

* * * * *

Martin County. That portion of the county beginning at the intersection of the Martin/Pitt County line and U.S. Highway 64 (new); then east along U.S. Highway 64 (new) to State Road 1407; then northeast along State Road 1407 to State Road 1409; then east along State Road 1409 to State Road 1423; then north along State Road 1423 to its end; then north along an imaginary line to the Roanoke River; then east along the shoreline of the Roanoke River to the Martin/Washington County line; then south along the Martin/Washington County line to the Martin/Beaufort County line; then west along the Martin/Beaufort County line to the Martin/Pitt County line; then northwest along the Martin/Pitt County line to the point of beginning.

* * * * *

Perquimans County. That portion of the county beginning at the intersection of the Perquimans/Chowan County line and U.S. Highway 17 North; then northeast along U.S. Highway 17 North to U.S. Highway 17 North by-pass; then northeast along U.S. Highway 17 North by-pass to the Perquimans River; then southeast along the shoreline of the Perquimans River to the Albemarle Sound; then west and north along the shoreline of the Albemarle Sound to the Perquimans/Chowan County line; then northwest along the Perquimans/Chowan County line to the point of beginning.

* * * * *

Tennessee

* * * * *

Madison County. That portion of the county lying south of Interstate Highway 40.

* * * * *

3. In part 301, Subpart—Imported Fire Ant, the Appendix to the subpart is amended as follows:

a. In paragraph III.C.5., in the ''Material'' paragraph, the phrase ''Granular chlorpyrifos (any granular formulation that is EPA registered)'' is removed and the word ''Chlorpyrifos'' is added in its place.

b. In paragraph III.C.5., in the ''Method'' paragraph, third sentence, the word ''granular'' is removed.

c. In paragraph III.C.5., in the ''Special Information'' paragraph, first sentence, the word ''granular'' is removed.

d. In paragraph III.C.8., the ''Material'' paragraph is revised to read as set forth below.

e. In paragraph III.C.8.1., under the heading ''Method'', the word ''granular'' is removed.

Subpart—Imported Fire Ant

* * * * *

Appendix to Subpart ''Imported Fire Ant''—Portion of ''Imported Fire Ant Program Manual'' [8]

III. Regulatory Procedures

* * * * *

C. *Approved Treatments.*

* * * * *

8. Grass—Sod

Material

Chlorpyrifos.

Material	Amount and dosage of material	Certification period
Chlorpyrifos	4.0 lb (1.8 kg) a.i./acre	4 weeks (after exposure period has been completed).
Chlorpyrifos	6.0 lb (2.7 kg) a.i./acre	10 weeks (after exposure period has been completed).

Exposure Period: 48 hours.

* * * * *

Done in Washington, DC, this 17th day of May, 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–12884 Filed 5–20–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 207

[INS No. 1999–99]

RIN 1115–AF49

Application for Refugee Status; Acceptable Sponsorship Agreement and Guaranty of Transportation

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Section 207 of the Immigration and Nationality Act (Act) authorizes the Attorney General to admit refugees to the United States under certain conditions, including those provided for by regulation. The Immigration and Naturalization Service (Service) regulations require that sponsorship agreements be secured before an applicant is granted admission as a refugee at a U.S. port-of-entry (POE). The determination of whether or not someone is classified as a refugee is described in the Act as a separate decision from whether a refugee may be admitted to the United States in refugee status. This rule amends the Service regulations by removing language that erroneously implies that the Service requires a sponsorship agreement and guaranty of transportation prior to determining whether an applicant is a refugee. This rule is necessary to clarify issues that may appear ambiguous in the existing regulation, and provides more advantageous treatment for the limited number of applicants for refugee status who have their Service interviews before sponsorship agreements have been secured.

DATES: *Effective date:* This interim rule is effective May 21, 1999.

Comment date: Written comments must be submitted on or before July 20, 1999.

ADDRESSES: Please submit written comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1999–99 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Kathleen Thompson, Office of International Affairs, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, Telephone (202) 305–2662.

SUPPLEMENTARY INFORMATION: Section 207 of the Act authorizes the Attorney General to admit refugees to the United States under certain conditions. By regulation, sponsorship is required before a refugee can be admitted to the United States. Sponsorship ensures refugees who are admitted to the United States transportation, housing, and assistance in this country. Sponsorship is a requirement separate and apart from the determination that an applicant is classified as a refugee. The current regulations at 8 CFR 207.2(d), states that: ''[t]he application for refugee status will not be approved until the Service receives an acceptable sponsorship agreement and guaranty of transportation in [sic] behalf of the applicant.''

This sentence may inappropriately imply that there is a requirement to have secured sponsorship in advance of a determination to be classified as a refugee, which is not the case. The Service has never required the sponsorship assurance before determining whether an applicant meets the definition of refugee under section 101(a)(42) of the Act.

All refugees seeking admission to the United States must satisfy the statutory and regulatory requirements before the Service can admit them to the United States. For example, a refugee must have a sponsor at the time he or she appears at a U.S. POE with an approved Form I–590, Registration for Classification as Refugee, in order to be admitted as a refugee. If the required sponsorship has not been secured or the required medical screening has not been completed, and the refugee arrives at a U.S. POE, the immigration inspector cannot admit the refugee.

Good Cause Exception

This interim rule is effective upon date of publication in the **Federal Register**, although the Service invites post-promulgation comments within a 60-day comment period and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists under 5 U.S.C. 553(b)(B) and (d)(3) for implementing this rule as an interim rule without the prior notice and comment period ordinarily required under this provision. This rule simply clarifies issues that may appear ambiguous in the existing regulation, and provides more advantageous treatment for the limited number of applicants for refugee status who have their Service interviews before sponsorship agreements have been secured. Early implementation will be advantageous to the intended beneficiaries of this rule. Therefore, it is unnecessary and contrary to the public

[8] A copy of the entire ''Imported Fire Ant Program Manual'' may be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737–1236.

interest to delay the implementation of this rule until after a notice and comment period.

Regulatory Flexibility Act

The Commissioner, Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because of the following factors: This rule clarifies the difference between refugee classification and refugee status. It also clarifies the timing and significance of those determinations. This change will not affect small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 207

Immigration, Refugees, Reporting and recordkeeping requirements.

Accordingly, part 207 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 207—ADMISSION OF REFUGEES

1. The authority citation for part 207 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1158, 1159, 1182; 8 CFR part 2.

§ 207.2 [Amended]

2. In § 207.2, paragraph (d) is amended by removing the last sentence.

Dated: May 11, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–12840 Filed 5–20–99; 8:45 am]

BILLING CODE 4410–10–N

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–96–AD; Amendment 39–11176; AD 99–11–06]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. This AD requires inspecting both (left and right wing configurations) environmental control system bleed tubes for damage, leakage, and a correct gap between the tube and wing lower panel crossing area, inspecting the wiring and surrounding structures for damage, and correcting any discrepancies found. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent thermal expansion from causing leakage of an environmental control system bleed tube because of improper installation, which could result in deterioration of the electrical wiring and the surrounding structure.

DATES: Effective July 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 5, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–96–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6941; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all I.A.M. Model Piaggio P–180 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 18, 1999 (64 FR 8020). The NPRM proposed to require inspecting both (left and right wing configurations) environmental control system bleed tubes for damage (dents), leakage, and a correct gap between the tube and wing lower panel crossing area. If any environmental control system bleed tube is found damaged beyond certain limits or an incorrect gap between the tube and wing lower panel crossing area is found, the NPRM proposed to require replacing the bleed tube and rotating the bleed tube to match the necessary gap, as applicable. The NPRM also proposed to require inspecting the wiring and surrounding structures for damage if any leakage is found, and repairing any damaged wiring or surrounding structures.

Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Piaggio Service Bulletin (Mandatory) No.: SB–

80–0072, Revision No. 1, dated September 9, 1998.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry will be affected by the inspection, that it will take approximately 5 workhours per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $1,500, or $300 per airplane. These figures only take into account the costs of the inspection of the environmental control system bleed tubes and do not take into account the costs of any necessary follow-up action.

If any damage is found during the above-referenced inspection, the costs to accomplish any follow-up actions (tube replacement/gap adjustment/follow-up inspections) will take approximately 8 workhours per airplane to accomplish at an average labor rate of approximately $60 an hour. Parts cost approximately $500. Based on these figures, the total cost impact of any necessary follow-up actions is estimated at $980 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–11–06 Industrie Aeronautiche E Meccaniche: Amendment 39–11176; Docket No. 98-CE–96-AD.

Applicability: Model Piaggio P–180 airplanes, all serial numbers up to and including serial number 1031, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent thermal expansion from causing leakage of the environmental control system bleed tube because of improper installation, which could result in deterioration of the electrical wiring and the surrounding structure, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect both (left and right wing configurations) environmental control system bleed tubes for damage (dents), leakage, and a correct gap between the tube and wing lower panel crossing area. Accomplish these actions in accordance with Part A of Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Revision No. 1, dated September 9, 1998.

(b) If any environmental control system bleed tube is found damaged during the inspection required by paragraph (a) of this AD, prior to further flight, replace the damaged environmental control system bleed tube. Accomplish this action in accordance with Part B of Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Revision No. 1, dated September 9, 1998.

(c) If any leakage is found during the inspection required by paragraph (a) of this AD, prior to further flight, inspect the wiring and surrounding structures for damage, and repair any damaged wiring or surrounding structures. Accomplish the inspection in accordance with Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Revision No. 1, dated September 9, 1998, and any repair in accordance with the applicable maintenance manual or other applicable FAA-approved document.

(d) If any incorrect gap between the tube and wing lower panel crossing area is found during the inspection required by paragraph (a) of this AD, prior to further flight, rotate the bleed tube to match the necessary gap. Accomplish this action in accordance with Part B of Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Revision No. 1, dated September 9, 1998.

Note 2: Part C of Piaggio Service Bulletin (Mandatory) No.: SB–80–0072; Revision No. 1, dated September 9, 1998, includes procedures for accomplishing this AD for those airplanes where the Original Issue of the above-referenced service bulletin was already incorporated. For those owners/operators who have already accomplished the actions specified in Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Original Issue: June 5, 1998, only these procedures in Part C apply.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) Questions or technical information related to Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Revision No. 1, dated September 9, 1998, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) The inspections, replacement, and modification required by this AD shall be done in accordance with Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Revision No. 1, dated September 9, 1998. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Italian AD 98–329, dated September 18, 1998.

(i) This amendment becomes effective on July 5, 1999.

Issued in Kansas City, Missouri, on May 13, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–12828 Filed 5–20–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29570; Amdt. No. 1930]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscripton—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same

reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on May 14, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 1.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 17, 1999*

Bradford, PA, Bradford Regional, NDB RWY 32, Amdt 13, CANCELLED
Pittsburgh, PA, Pittsburgh International, ILS RWY 10C, Orig, CANCELLED
Pittsburgh, PA, Pittsburgh International, ILS RWY 28C, Orig, CANCELLED
Suffolk, VA, Suffolk Muni, NDB RWY 7, Amdt 1B, CANCELLED
Ravenswood, WV, Jackson County, VOR/DME RWY 4, Amdt 2A, CANCELLED

** * * Effective July 15, 1999*

Barter Island, AK, Barter Island LRRS, NDB RWY 6, Orig
Barter Island, AK, Barter Island LRRS, GPS RWY 6, Orig
Barter Island, AK, Barter Island LRRS, GPS RWY 24, Orig
Chico, CA, Chico Muni, GPS RWY 13L, Orig
Chico, CA, Chico Muni, GPS RWY 31R, Orig
Marysville, CA, Yuba County, GPS RWY 14, Orig
Marysville, CA, Yuba County, GPS RWY 32, Orig
San Francisco, CA, San Francisco Intl, GPS RWY 19L, Orig
Santa Rosa, CA, Sonoma County, GPS RWY 14, Orig
Santa Rosa, CA, Sonoma County, GPS RWY 32, Orig
Danbury, CT, Danbury Muni, LOC RWY 8, Amdt 3
Danbury, CT, Danbury Muni, VOR/DME RNAV RWY 8, Amdt 5
Danbury, CT, Danbury Muni, VOR/DME RNAV OR GPS RWY 26, Amdt 6
Danbury, CT, Danbury Muni, VOR OR GPS–A, Amdt 9
Danbury, CT, Danbury Muni, GPS RWY 8, Amdt 1
Groton/New London, CT, Groton-New London, VOR OR GPS RWY 5, Amdt 7
Groton/New London, CT, Groton-New London, VOR OR GPS RWY 23, Amdt 9
Groton/New London, CT, Groton-New London, GPS RWY 33, Amdt 1
Laurel, DE, Laurel, VOR/DME OR GPS RWY 32, Orig, CANCELLED
Laurel, DE, Laurel, GPS–A, Orig
El Dorado, KS, Capt Jack Thomas/El Dorado, NDB RWY 4, Amdt 3
El Dorado, KS, Capt Jack Thomas/El Dorado, GPS RWY 4, Orig
El Dorado, KS, Capt Jack Thomas/El Dorado, GPS RWY 15, Orig
El Dorado, KS, Capt Jack Thomas/El Dorado, GPS RWY 22, Orig
El Dorado, KS, Capt Jack Thomas/El Dorado, GPS RWY 33, Orig
Newton, KS, Newton-City-County, NDB RWY 17, Amdt 4
Newton, KS, Newton-City-County, ILS RWY 17, Amdt 3
Newton, KS, Newton-City-County, VOR/DME–A, Amdt 1
Newton, KS, Newton-City-County, VOR/DME RNAV RWY 17, Amdt 2
Newton, KS, Newton-City-County, VOR/DME RNAV RWY 35, Amdt 2
Newton, KS, Newton-City-County, GPS RWY 17, Orig
Newton, KS, Newton-City-County, GPS RWY 35, Orig
Ithaca, NY, Tompkins County, VOR OR GPS RWY 14, Amdt 13
Burlington, NC, Burlington-Alamance Regional, VOR/DME–A, Amdt 1
Burlington, NC, Burlington-Alamance Regional, LOC RWY 6, Amdt 2
Burlington, NC, Burlington-Alamance Regional, NDB RWY 6, Amdt 1
Burlington, NC, Burlington-Alamance Regional, GPS RWY 6, Amdt 1
Burlington, NC, Burlington-Alamance Regional, GPS RWY 24, Amdt 1
Lumberton, NC, Lumberton Muni, GPS RWY 5, Orig
Lumberton, NC, Lumberton Muni, GPS RWY 13, Orig
Fremont, OH, Sandusky County Regional, GPS RWY 6, Orig
Fremont, OH, Sandusky County Regional, GPS RWY 24, Orig
Guymon, OK, Guymon Muni, GPS RWY 18, Orig
Ponca City, OK, Ponca City Muni, GPS RWY 17, Orig
Seminole, OK, Seminole Muni, GPS RWY 16, Orig
Stillwater, OK, Stillwater Muni, GPS RWY 17, Orig
Stillwater, OK, Stillwater Muni, GPS RWY 35, Orig
Tulsa, OK, Tulsa Intl, GPS RWY 36L, Orig
Langhorne, PA, Buehl Field, VOR OR GPS–A, Orig, CANCELLED
Fayetteville, TN, Fayetteville Muni, GPS RWY 2, Orig
Fayetteville, TN, Fayetteville Muni, GPS RWY 20, Orig
Newport, VT, Newport State, NDB–A, Amdt 3
Newport, VT, Newport State, GPS RWY 36, Orig
Winchester, VA, Winchester Regional, VOR/DME OR GPS–A, Amdt 4
Winchester, VA, Winchester Regional, NDB OR GPS–B, Amdt 1
Winchester, VA, Winchester Regional, ILS RWY 32, Amdt 1
Winchester, VA, Winchester Regional, GPS RWY 14, Orig
Milton, WV, Ona Airpark, VOR–A, Amdt 2
Milton, WV, Ona Airpark, GPS RWY 7, Orig
Morgantown, WV, Morgantown Muni-Walter L. Bill Hart Field, GPS RWY 18, Orig

[FR Doc. 99–12948 Filed 5–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29571; Amdt. No. 1931]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800

Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on May 14, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * EFFECTIVE UPON PUBLICATION

FDC date	State	City	Airport	FDC No.	SIAP
04/06/99	NY	SKANEATELES	SKANEATELES AERO DROME	9/2272	VOR or GPS–A ORIG–A
04/29/99	PA	PITTSBURGH	ALLEGHENY COUNTY	9/2848	ILS RWY 28 AMDT 27A

* * * EFFECTIVE UPON PUBLICATION

FDC date	State	City	Airport	FDC No.	SIAP
04/29/99	PA	STATE COLLEGE	UNIVERSITY PARK	9/2846	VOR/DME RNAV or GPS RWY 6 AMDT 6
04/29/99	PA	STATE COLLEGE	UNIVERSITY PARK	9/2847	VOR or GPS–B AMDT 9
04/29/99	WI	APPLETON	OUTAGAMIE COUNTY REGIONAL ...	9/2851	ILS RWY 3, AMDT 16C
04/30/99	MO	BUTLER	BUTLER MEMORIAL	9/2875	GPS RWY 18, ORIG
04/30/99	TX	AUSTIN	AUSTIN-BERGSTROM INTL	9/2879	ILS RWY 35L, AMDT 1
04/30/99	TX	AUSTIN	AUSTIN-BERGSTROM INTL	9/2880	GPS RWY 35L, AMDT 1
04/30/99	TX	AUSTIN	AUSTIN-BERGSTROM INTL	9/2881	GPS RWY 17R, AMDT 1
04/30/99	TX	AUSTIN	AUSTIN-BERGSTROM INTL	9/2882	ILS RWY 17R, AMDT 1
05/1/99	NH	MANCHESTER	MANCHESTER	9/3102	ILS RWY 2, AMDT 2
05/1/99	NH	MANCHESTER	MANCHESTER	9/3103	ILS RWY 35, AMDT 19
05/04/99	IL	CHICAGO/AURORA	AURORA MUNI	9/2970	VOR or GPS–A AMDT 1A
05/05/99	IL	CHICAGO/AURORA	AURORA MUNI	9/2983	ILS RWY 9, AMDT 1A
05/06/99	OH	MIDDLETOWN	HOOK FIELD MUNI	9/3009	LOC RWY 23, AMDT 7B
05/06/99	OH	MIDDLETOWN	HOOK FIELD MUNI	9/3010	NDB or GPS RWY 23, AMDT 8A
05/06/99	OH	MIDDLETOWN	HOOK FIELD MUNI	9/3011	NDB or GPS–A, AMDT 2A
05/10/99	MN	WORTHINGTON	WORTHINGTON MUNI	9/3086	NDB or GPS RWY 29, ORIG
05/10/99	MN	WORTHINGTON	WORTHINGTON MUNI	9/3088	ILS RWY 29, ORIG
05/10/99	VA	RICHMOND	CHESTERFIELD COUNTY	9/3074	NDB or GPS RWY 33, AMDT 7A
05/10/99	VA	RICHMOND	CHESTERFIELD COUNTY	9/3075	VOR/DME or GPS RWY 15, ORIG
05/10/99	VA	RICHMOND	CHESTERFIELD COUNTY	9/3082	ILS RWY 33, ORIG

[FR Doc. 99–12949 Filed 5–20–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 352, 700, and 740

[Docket No. 78N–0038]

RIN 0910–AA01

Sunscreen Drug Products For Over-The-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) sunscreen drug products are generally recognized as safe and effective and not misbranded as part of FDA's ongoing review of OTC drug products. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and new data and information on sunscreen drug products that have come to the agency's attention. FDA is also issuing final rules regarding the labeling of certain cosmetic products to inform consumers that these products do not provide protection from the sun.

EFFECTIVE DATES: This regulation is effective May 21, 2001 for parts 310, 352, and 700 and is effective May 22, 2000 for part 740.

FOR FURTHER INFORMATION CONTACT: John D. Lipnicki, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of August 25, 1978 (43 FR 38206), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking (ANPRM) to establish a monograph for OTC sunscreen drug products, together with the recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention Drug Products (the Panel), which was the advisory review panel that evaluated data on the active ingredients in this drug class. The agency's proposed regulation for OTC sunscreen drug products, in the form of a tentative final monograph, was published in the **Federal Register** of May 12, 1993 (58 FR 28194).

In the **Federal Register** of June 8, 1994 (59 FR 29706), the agency proposed to amend the tentative final monograph (and reopened the comment period until August 22, 1994) to remove five sunscreen ingredients because of a lack of interest in establishing United States Pharmacopeia (USP) monographs: Digalloyl trioleate, ethyl 4-[bis(hydroxypropyl)] aminobenzoate, glyceryl aminobenzoate, lawsone with dihydroxyacetone (interest was subsequently shown in developing a monograph for lawsone and dihydroxyacetone), and red petrolatum. The agency also reiterated that all sunscreen ingredients must have a USP monograph before being included in the final monograph for OTC sunscreen drug products. This final rule includes those sunscreen ingredients that have USP monographs.

In the **Federal Register** of September 16, 1996 (61 FR 48645), the agency amended the proposed rule to include avobenzone as a single ingredient and in combination with certain other sunscreen ingredients (interim marketing was allowed in the **Federal Register** of April 30, 1997 (62 FR 23350)). In the **Federal Register** of October 22, 1998 (63 FR 56584), the agency proposed to amend the tentative final monograph to include zinc oxide as a single ingredient and in combination with any proposed Category I sunscreen active ingredient except avobenzone.

In the **Federal Register** of April 5, 1994 (59 FR 16042), the agency reopened the administrative record and announced a public meeting to discuss ultraviolet A (UVA) radiation claims and testing procedures. In the **Federal Register** of August 15, 1996 (61 FR 42398), the agency reopened the administrative record and announced a public meeting to discuss the photochemistry and photobiology of sunscreens.

This final monograph completes the tentative final monograph except for

certain testing issues and UVA labeling, which the agency will discuss in future issues of the **Federal Register**. Until then, UVA labeling may continue in accord with the tentative final monograph and its amendments. The agency advises that on or after May 21, 2001, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved new drug application or abbreviated new drug application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily as soon as possible.

In response to the proposed rule on OTC sunscreen drug products and subsequent reopenings of the administrative record, the agency received 433 comments. The comments included four petitions (Refs. 1 through 4) requesting consideration of sunscreen ingredients that have been marketed in Europe but not in the United States. The status of these petitions is discussed in section II.C, comment 13 of this document. One manufacturer requested an oral hearing before the Commissioner of Food and Drugs if the agency mandated a limit on sun protection factor (SPF) values in this final rule. Copies of the information considered by the Panel, the comments and petitions, and the hearing request are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All ''OTC Volumes'' cited throughout this document refer to information on public display.

A number of comments were filed in the Dockets Management Branch after the dates the administrative record had officially closed. The agency has considered these comments as ''feedback'' communications under the OTC drug review procedures, as discussed in the **Federal Register** of September 29, 1981 (46 FR 47740), and clarified in the **Federal Register** of April 1, 1983 (48 FR 14050). When ''feedback'' material submitted after an administrative record has officially closed directly influences or forms one of the bases for the agency's decision on a matter in an OTC drug rulemaking proceeding, the agency adds it to the administrative record without submission of a formal petition by an interested party.

The agency has included these data and information in the administrative record and addressed them in this document. The agency has considered the request for an oral hearing in its response to the comment and believes it has adequately responded to the manufacturer and that a hearing is not needed. As discussed in section II.G, comment 29 of this document, the agency is allowing the marketing of OTC sunscreen drug products with SPF values above 30 under one collective term (i.e., ''30 plus'' or ''30 +''). The agency will also consider including labeling in the monograph with actual label SPF values on products with SPF values over 30 when adequate data are submitted to substantiate a testing procedure applicable to SPF values over 30.

II. The Agency's Conclusions on the Comments

A. General Comments on OTC Sunscreen Drug Products

1. Several comments asked that the agency either exempt currently marketed sunscreen products from the requirement for redetermining the SPF or provide a 2-year implementation period. One comment requested a 3-year implementation period. The comments contended that the proposed 12-month implementation period would result in lost business and a serious economic hardship for manufacturers, estimated to be 35 million dollars for reformulating, retesting, and relabeling sunscreen products.

The agency agrees with the comments that the proposed 12-month implementation period may cause undue economic burden on some manufacturers of these products without a corresponding benefit to consumers (see section VII of this document). As discussed in section VII, a 24-month effective date would allow most firms to relabel products during a normal relabeling cycle without incurring additional costs. Accordingly, the final rule will be effective 24 months from the date of this publication. Because this final rule provides testing procedures that were proposed in the tentative final monograph, currently marketed products that have already been tested by those procedures will not need to be retested. However, sunscreen products that have not been tested will need to be tested using the methods described in this document. The agency intends to propose modified test procedures in a future issue of the **Federal Register** and any necessary retesting time will be specified when the final rule for testing procedures publishes.

2. Several comments recommended modifications to the definition of minimal erythema dose (MED) in proposed § 352.3(a). Some comments objected to the presumption that erythema is a ''diffusing'' reaction that starts from within the exposed site and moves outward in a dose dependent manner, i.e., ''redness reaching the borders of the exposure site.'' Other comments asserted that the definition is too limiting because it may not be appropriate for all solar simulator configurations (e.g., no template). Many comments recommended the definition of MED used by the European Trade Association COLIPA (Ref. 5): ''The quantity of radiant energy required to produce the first perceptible, unambiguous redness reaction with clearly defined borders.'' Another comment recommended ''erythema-effective ultraviolet radiation'' in place of ''radiant energy.''

The agency agrees that the proposed definition of MED should be modified for the reasons discussed by the comments and is revising § 352.3(a) in this final rule, as follows: ''*Minimal erythema dose (MED).* The quantity of erythema-effective energy (expressed in Joules per square meter) required to produce the first perceptible redness reaction with clearly defined borders.'' The agency considers this definition broad enough to encompass tests conducted with solar simulator configurations with no template and consistent with COLIPA's definition.

3. One comment noted that the wavelength ranges for UVA, UVB, and UVC radiation in the tentative final monograph differed from the official ranges of the Commission International de L'Eclairage (CIE), which are: (1) UVC–radiation of less than 280 nanometers (nm), (2) UVB–280 to 315 nm, and (3) UVA–315 to 400 nm. The comment mentioned the agreement reached at the 11th International Congress on Photobiology (Ref. 6) on the short wavelength end of UVB radiation (280 or 290 nm) and suggested that the scientific evidence supports 320 nm as the long-wavelength boundary of UVB radiation.

The agency agrees with the comment that the scientific evidence supports 320 nm as the long-wavelength boundary of UVB radiation. However, the short-wavelength boundary for UVB radiation has been accepted as either 280 or 290 nm. Given that the comment did not provide a compelling reason to change the proposed definition of UVB radiation, the agency will continue to

define the boundaries of UVB radiation as 290 to 320 nm.

4. Comments requested the agency to amend the definition of a sunscreen active ingredient in proposed § 352.3(c) to include mechanisms other than absorption, to expand the UV range to include UVA radiation, and to provide a minimum SPF value requirement. The comments added that some proposed Category I active ingredients (e.g., menthyl anthranilate and titanium dioxide) do not meet the proposed definition, and that the definition is not interpretable without specifications for measuring 85 percent absorbance.

The agency discussed the need to modify the definition in a 1996 proposed amendment of the tentative final monograph (61 FR 48645 at 48646). The agency agrees that modifications should be to: (1) Include mechanisms other than absorption, (2) redefine wavelengths, and (3) remove the percent absorbance requirement. The agency does not agree that a minimum SPF value should be included in the definition because this information is more appropriately a characteristic of the final formulation. Therefore, the agency has revised proposed § 352.3(c) in this document, to read: ''*Sunscreen active ingredient.* An ingredient listed in § 352.10 that absorbs, reflects, or scatters radiation in the ultraviolet range at wavelengths of 290 to 400 nanometers.''

5. One comment recommended that the agency reevaluate statements in the tentative final monograph on the harmful nature of tanning. The agency discussed the harmful effects of UV radiation-induced tanning in the tentative final monograph (58 FR 28194 at 28238 to 28239). The comment suggested that a natural tan reduces cumulative sun exposure and may potentiate sunscreen effectiveness. The comment did not, however, provide data or references to support this claim or to otherwise cause the agency to change its position.

6. One comment requested that the final monograph require expiration dating and storage information in the labeling of OTC sunscreen drug products. The comment noted that under 21 CFR 211.137, OTC drug products with data demonstrating stability for 3 years and without labeled dosage limitations are not required to include an expiration date in their labeling. The comment stated that it was aware of numerous cases that suggest these products may not be stable for 3 years.

The agency requested the comment to provide data and information about the specific products it was aware of (Ref. 7), but none were subsequently provided. The agency is not currently aware of stability problems that would require expiration dating for OTC sunscreen drug products but will address such a requirement if data become available. All sunscreen active ingredients included in the final monograph also have a USP monograph that contains packaging and storage requirements and standards for products containing these ingredients.

7. Comments recommended that the agency establish procedures for ensuring batch-to-batch SPF test results, and that it approve testing laboratories and regulate their performance.

Regulations already exist to assure that each batch of drug product meets established specifications for the identity and strength of each active ingredient. Specifically, 21 CFR 211.160 requires that product specifications and laboratory controls be established and performed. Although the agency would not require SPF testing on human subjects for every batch produced, manufacturers need to assure conformance to their finished product specifications. Further, any changes to the batch formula would, at a minimum, require review and documentation by the manufacturer's quality control unit to determine if SPF retesting is necessary. Finally, 21 CFR 211.180 provides for the inspection of records pertaining to production, control, and distribution of batches of drug products. Thus, testing laboratories are subject to these regulations.

B. Comments on the Drug/Cosmetic Status of Sunscreen Products

8. One comment questioned whether sunscreen products should be regulated as drugs. The comment asserted that such products are not active in the mitigation or elimination of a disease condition, and that sunscreen products have no more affect on the structure and function of the body than ''being in physical shade.''

The basis for the agency's determination that products intended for use as sunscreens are subject to regulation as drugs under section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(g)(1)) is set forth at length in the tentative final monograph (58 FR 28194 at 28203 to 28206). Essentially, sunscreen active ingredients affect the structure and function of the body by absorbing, reflecting, or scattering the harmful, burning rays of the sun, thereby altering the normal physiological response to solar radiation. Proper use of sunscreen ingredients (see section II.L, comment 51 of this document) may help to prevent skin damage and may help reduce the risk of skin lesions, skin cancer, and other disease conditions. Products that are marketed to achieve these important health benefits meet the definition of a drug under section 201(g)(1)(B) and (g)(1)(C) of the act.

9. One comment disagreed with the agency's tentative conclusion that products containing a sunscreen ingredient, but labeled for the purpose of obtaining an ''even tan,'' are subject to regulation as drugs. According to the comment, such a product is subject to regulation as a drug only if it bears a claim to treat or prevent sunburn. The comment asserts that this has been the agency's consistent approach since 1940.

Another comment stated that sunless tanning products, used to impart color without exposure to the sun, could be improved by adding a sunscreen to provide users protection during their normal outside activities. The comment requested that such products should be regarded as cosmetics, because they would be used primarily for a cosmetic effect, with the sunscreen protection serving only a secondary purpose.

The agency thoroughly discussed the regulatory status of ''tanning'' products, including the basis for withdrawing its 1940 advisory opinion on sunburn and suntan preparations, in the tentative final monograph (58 FR 28194 at 28203 to 28207, 28293 to 28294). As discussed in the tentative final monograph, the presence of a sunscreen active ingredient, in conjunction with labeling claims that the product may be used, e.g., to permit tanning or to acquire an even tan, generally establishes that the product's intended use is that of a drug. Such products suggest, among other things, that the ingredients in the product will allow the consumer to stay in the sun longer without suffering skin damage (58 FR 28194 at 28204). Likewise, products that claim to accelerate or stimulate the tanning process are claiming, either expressly or impliedly, to stimulate the production of melanin in the body. Such a claim to affect the structure or function of the body renders the product subject to regulation as a drug under section 201(g)(1) of the act (see 58 FR 28194 at 28293). Finally, a sunless tanning product that contains a sunscreen ingredient, to provide protection to the consumer, is subject to regulation as a drug. The idea that the sunburn protection offered by the product may only be a ''secondary'' feature for the consumer is not relevant. If an intended use of the product is to provide users with sun protection when they go

outside (as the comment suggests), then the product is subject to regulation as a drug.

On the other hand, products that do not make express or implied sun protection claims, and do not contain sunscreen ingredients, may be regarded as cosmetics under section 201(i) of the act. If the product is intended solely to provide cosmetic effects on the skin (e.g., to moisturize the skin while sunbathing), or solely to impart color to the skin without exposure to the sun or other sources of light (i.e., sunless tanning), then the product may be marketed as a cosmetic. Such products, however, must include a warning statement (discussed in this section, comment 10 of this document) to inform the consumer that the product does not provide any protection against sunburn. Products marketed to enhance or permit tanning that do not contain a sunscreen ingredient must be reviewed on a case-by-case basis to determine whether the product is intended solely to provide a cosmetic benefit (such as moisturizing) or whether the product is intended to enhance or permit tanning by some other mechanism of action.

The comments offered no other reasoning and no data to the contrary, other than to suggest that the agency's approach would encourage manufacturers to remove sunscreen ingredients from suntan products and, thereby, expose consumers to even higher levels of harmful ultraviolet rays. The agency is not persuaded that a significant number of manufacturers will choose to reformulate their products, to make them less safe for consumers, as a result of this final rule. Moreover, consumers will continue to have an array of sunscreen-containing products from which to choose. Finally, as discussed below, certain tanning products (including sunless tanning products) that do not contain sunscreen ingredients must bear a prominent warning to the consumer. This will ensure that the consumer is fully informed as to which products offer sun protection and which do not.

10. One comment requested that the signal word ''Caution'' replace the signal word ''Warning'' preceding the following statement for suntanning preparations: ''Warning—This product does not contain a sunscreen and does not protect against sunburn.'' The comment stated that the word ''Warning'' suggests safety hazards associated with these products that are unrelated to sunburn. Another comment petitioned to add a second sentence to the warning: ''Tanning in sunlight or under tanning lamps can cause skin cancer and premature skin aging-even if you don't burn.'' The comment concluded that the availability of tanning products without a protective sunscreen ingredient is a serious health issue and detrimental to public health. A third comment objected to any such warnings on tanning products.

The agency considers it an important public health issue that users of suntanning products be alerted when these products do not contain a sunscreen and do not protect against sunburn or other harmful effects to the skin. Because suntanning products are intended for repeated use under the sun or suntanning lamps while acquiring a tan, the agency considers failure to provide information on hazards associated with repeated, unprotected exposure to UV radiation to be a failure to reveal material facts (see sections 201(n), 502(a), and 602(a) of the act (21 U.S.C. 352(a) and 362(a))), especially in light of the representations that are made for the product (e.g., suntanning). Therefore, the agency is requiring the labeling of suntanning preparations that do not contain a sunscreen ingredient (§ 740.19 (21 CFR 740.19)) to bear the following: ''Warning—This product does not contain a sunscreen and does not protect against sunburn. Repeated exposure of unprotected skin while tanning may increase the risk of skin aging, skin cancer, and other harmful effects to the skin even if you do not burn.'' The agency considers this information to be sufficiently important, for safety reasons, to require a 12-month effective date (as opposed to 24 months for the balance of the rule) and to require the strongest possible signal word, i.e., ''Warning.''

11. One comment disagreed with the proposal that hair care and nail products that contain a sunscreen ingredient for a nontherapeutic use (e.g., to protect the color of the product), and that use the term ''sunscreen'' in the labeling, must describe in the labeling the functional role of the sunscreen. According to the comment, it is highly unlikely that consumers would think that these products are intended to protect the skin. If this requirement were finalized, the comment requested that the agency permit the term ''sunscreen'' to appear once anywhere in the labeling, with the purpose of the sunscreen explained elsewhere in the labeling.

The agency disagrees with the premise of this comment. The use of the term ''sunscreen'' in labeling suggests that the product in some way will protect the consumer from the harmful effects of the sun. The health risks associated with relying on a product for protection from the sun, when in fact the product does not provide such protection, are sufficiently serious to require the type of disclosure outlined in the proposed rule. Information about the purpose of a sunscreen ingredient in a hair care or nail product will be useful to consumers to inform them that the ingredient protects only the hair or only the color of the product.

This information need appear only once and can appear anywhere in the labeling, provided the qualifying purpose appears prominently and conspicuously and in conjunction with the word ''sunscreen.'' The information may, e.g., be combined in a single statement, e.g., ''Contains a sunscreen—to protect product color.'' This will ensure that consumers will see and readily associate the two pieces of information.

12. Two comments objected to the use of an OTC drug rulemaking process to change cosmetic labeling requirements, i.e., the addition of a warning on certain tanning products and the labeling requirements for hair care or nail products that contain a sunscreen for a nontherapeutic use.

The agency addressed this procedural concern, which was also raised in response to the ANPRM, at length in the tentative final monograph (58 FR 28194 at 28201 to 28202). The industry and consumers have had ample notice of the fact that this proceeding included several cosmetic labeling issues that arise out of the same facts and findings at issue in developing the OTC drug monograph. It is not uncommon for the agency to address in an OTC rulemaking document the status of, or the regulation of, products that fall outside of the monograph. In this instance, the cosmetic labeling issues were so closely related to the OTC drug issues that a separate proceeding would have been overly duplicative and inefficient.

C. Comments on Specific Sunscreen Active Ingredients

13. Several comments noted that FDA had deferred a decision on the citizen petitions requesting that sunscreen active ingredients marketed solely in foreign countries be included in the OTC sunscreen monograph. The comments urged FDA answer these petitions and establish a policy concerning the inclusion of OTC sunscreens based solely on foreign data and marketing experience.

In the **Federal Register** of October 3, 1996 (61 FR 51625), the agency published an ANPRM that addressed establishing eligibility criteria for considering additional OTC conditions (i.e., OTC drug active ingredients, indications, dosage forms, dosage

strengths, routes of administration, and active ingredient combinations) in the OTC drug monograph system. These proposed criteria would address how foreign or domestic OTC marketing experience could be used to support the inclusion of an ingredient in an OTC drug monograph. Specifically, the criteria would address how OTC marketing experience in the United States or abroad could be used to meet the statutory requirement under section 201(p) of the act of marketing ''to a material extent'' and ''for a material time.'' ''Material extent'' and ''material time'' are needed to qualify a specific OTC drug condition for consideration under the OTC drug monograph system.

The decision on whether to proceed with a final rulemaking on this subject will be based, in part, on the information and comments submitted in response to the notice of proposed rulemaking that the agency is preparing for publication in a future issue of the **Federal Register**. Resolution of the pending sunscreen petitions must await the outcome of any final rulemaking on this subject.

14. One comment requested that the agency adopt simpler, more user-friendly, names for several sunscreen ingredients: (1) Roxadimate for ethyl-[bis(hydroxypropyl)] aminobenzoate, (2) lisadimate for glyceryl aminobenzoate, and (3) diolamine methoxycinnamate for diethanolamine methoxycinnamate. The comment claimed that these names had been adopted or designated by the United States Adopted Names (USAN) Council. The comment also requested that if USAN adopts a name for phenylbenzimidazole sulfonic acid, FDA adopt this name as well. The comment also suggested the use of the acronyms ''TEA'' and ''DEA'' for triethanolamine and diethanolamine, respectively.

The agency is including in this final monograph only those active ingredients that are the subject of an official USP compendial monograph that sets forth its standards of identity, strength, quality, and purity (see section I of this document). In the **Federal Register** of June 8, 1994, FDA deleted ethyl-[bis(hydroxypropyl)] aminobenzoate and glyceryl aminobenzoate from the tentative final monograph due to the lack of interest in establishing USP monographs for these ingredients. Moreover, two sunscreen ingredients (including diethanolamine methoxycinnamate) have been deferred from the final monograph due to the lack of a current or proposed compendial monograph. Therefore, the issue of whether a ''user-friendly'' name for these ingredients should be developed or adopted need not be resolved in this proceeding at this time. Similarly, TEA and DEA need not be addressed in this proceeding, as triethanolamine is not a sunscreen active ingredient, and diethanolamine is only used in the ingredient diethanolamine methoxycinnamate which, as discussed, is not a monograph ingredient at this time.

With respect to the comment on the monograph ingredient phenylbenzimidazole sulfonic acid, the agency agrees that if USAN or the USP were to adopt a different or alternative name for this ingredient, such a name could be used in the labeling of a product that contains this ingredient. As discussed in comment 30 of the tentative final monograph (58 FR 28194 at 28207 to 28209), the agency is using the compendial name as the established name for each active ingredient.

15. Two comments requested that the term ''PABA'' continue to be allowed in labeling. The comments stated that the name aminobenzoic acid is meaningless to consumers and physicians, who over the years have learned to recognize this ingredient on the label as PABA. One comment recommended the use of aminobenzoic acid in the ingredient list and the use of PABA in other communications about the product. The comment added that the term ''PABA-free'' should be allowed on products that do not contain aminobenzoic acid. The other comment proposed either to permit the listing of the ingredient as PABA or, if that is unacceptable, as PABA (aminobenzoic acid).

In comment 30 of the tentative final monograph (58 FR 28194 at 28207 to 28209), the agency discussed the issue of the appropriate established name for this and other sunscreen ingredients. As the agency stated in that discussion, the recognized compendial name for aminobenzoic acid no longer includes the term PABA.

The agency acknowledges, however, that the term PABA formerly was part of the established name for this ingredient and that the use of the term in consumer labeling has continued despite the change in the compendial name. In addition, the agency agrees with the comment that many consumers have learned to recognize this ingredient as, and only as, PABA. The agency also recognizes that consumers seeking to avoid the use of this ingredient for health-related reasons (e.g., allergy) may, in this case, be misled if the term PABA were no longer permitted. Some consumers may believe that a product that lists aminobenzoic acid as an ingredient, but does not list PABA, is PABA-free. If such a consumer has an allergy to aminobenzoic acid, the individual may suffer adverse health consequences.

For these reasons, and especially in light of the potential safety concerns for certain consumers, the agency concludes that wherever the ingredient aminobenzoic acid appears in the labeling of an OTC sunscreen drug product, including labeling that notes the absence of this ingredient, the descriptive term PABA must immediately follow the established name, i.e., ''Aminobenzoic acid (PABA).'' Thus, e.g., a product that is currently marketed as ''PABA-free'' would now be required to state that the product is ''Aminobenzoic acid (PABA)-free.'' This convention will allow consumers to begin to recognize that the ingredient they may wish to avoid is ''aminobenzoic acid.'' After a sufficient period of time, the agency will revisit the need for consumer labeling to continue to bear the descriptive term PABA.

16. One comment stated that claims of protection by artificial melanin, melanin-containing products, and antioxidants should be enumerated, well regulated, and defined.

The agency agrees with the comment, but these claims are not covered by this final monograph. Melanin and artificial melanins are not recognized sunscreen active ingredients. Any product containing melanin or artificial melanins as active ingredients and making sun protection claims would have to seek marketing approval under a new drug application (NDA).

The agency is aware that claims of protection from antioxidants are used in the labeling of some cosmetic products with or without a sunscreen. The agency will ascertain the nature of any such claims (drug or cosmetic) on a case-by-case basis.

17. Several comments objected to the agency's proposal that OTC sunscreen drug products must contain less than 500 parts per billion (ppb) of N-methyl-N-nitrosoaminobenzoate octyl ester (NMPABAO) for several reasons: (1) Toxicological studies indicate that NMPABAO does not have mutagenic or suspected carcinogenic potential (Ref. 8), (2) NMPABAO may be present in sunscreens containing padimate O only in small amounts (ppb range) and the risks associated with NMPABAO are very low, (3) NMPABAO decomposes quickly when exposed to UV radiation, and (4) industry is aware not to formulate with known nitrosating agents in the presence of amines in order to avoid nitrosamine contamination of its products. Some comments stated that FDA's own conclusions in the tentative

final monograph concerning the safety of both NMPABAO and padimate O do not support the imposition of concentration limits for NMPABAO in sunscreens nor do they justify the high cost of analyzing each batch of sunscreen product for NMPABAO. One comment contended that any proposed limit should apply to all nitrosamines and not just NMPABAO. The comment stated that nitrosamines can be formed from any secondary or tertiary amine. Several sunscreen active ingredients contain this moiety in their chemical structure and many inactive ingredients are secondary or tertiary amines. The comment concluded that targeting NMPABAO falsely conveys that padimate O is a unique concern, resulting in manufacturers using other ingredients to avoid costly testing and negative implications.

In the tentative final monograph, the agency did not propose a concentration limit on NMPABAO. Rather, based on concerns that had been raised, the agency asked for comment on whether it should consider proposing a fixed limit. As discussed in the tentative final monograph (58 FR 28194 at 28288 to 28293), toxicological studies support the agency's belief that the risk associated with NMPABAO contamination of sunscreen drug products is very low due to NMPABAO's low mutagenicity and carcinogenicity potential and rapid decomposition in the presence of UV radiation. The agency has not become aware of any new data or information since the publication of the tentative final monograph suggesting a safety concern with NMPABAO in sunscreen drug products. Therefore, the agency has decided not to propose or otherwise include in this final monograph a requirement that OTC sunscreen drug products must contain less than 500 ppb of NMPABAO.

In the tentative final monograph (58 FR 28194 at 28292), the agency discussed its analysis for NMPABAO in 25 commercially available sunscreen products. Of the 11 samples found to be contaminated with NMPABAO, the four highest contained 2-bromo-2-nitro-1,3-propanediol, an indirect nitrosating agent. The agency concluded that there would be no nitrosamine contamination if these products were formulated without the nitrosating agent. As noted by several of the comments, the industry is aware not to formulate with known nitrosating agents in the presence of amines in order to avoid nitrosamine contamination of its products.

18. One comment submitted a reference to a subchronic oral toxicity study in rats conducted with padimate O which a chemical manufacturer had submitted to the Toxic Substance Control Act 8(e) coordinator of the United States Environmental Protection Agency for consideration. The study was a 4-week repeated dose study at doses of 0, 100, 300, and 1,000 milligrams (mg)/kilogram (kg)/day of padimate O administered by gavage in a corn oil vehicle (10 to 15 rats/group/sex). The study included a 4-week recovery period to assess the persistence or reversibility of any toxic effects. At the end of the 4-week treatment period, toxic effects were seen in four target organs: Testes, epididymis, spleen, and liver. The no-observed-effect-level in this study was 100 mg/kg/day for both males and females. Toxic effects appeared reversible in the animals necropsied after the 4-week recovery period with the exception of marked epididymal hypospermia at the 1,000 mg/kg/day dose (5/5 animals).

The clinical relevance of this animal toxicity study is difficult to assess. Padimate O was administered chronically and at very high oral doses. Under normal use conditions, sunscreen drug products containing padimate O are applied topically and used intermittently. In addition, pharmacokinetic parameters were not calculated and the different routes of administration (oral in this study versus topical for sunscreen products) preclude calculation of a ''safety margin'' on the basis of dose per unit of body weight or surface area. Similarly, kinetic data are not available for a comparison of serum levels of drug or metabolites. Literature searches indicate no published information on the kinetics of padimate O with topical application in man. If percutaneous absorption of padimate O does occur in man, it seems likely that the peak and/or cumulative levels achieved with sunscreen usage would be quite low compared to the systemic exposure achieved in this animal toxicity study. Further, it is not known whether the irreversible epididymal hypospermia found in the 1,000 mg/kg/day group would also be reversible with more time.

The agency has determined that this study does not present sufficient data to exclude padimate O from the final monograph and that an adequate safety margin exists for its use as an OTC sunscreen ingredient.

19. Two comments submitted safety and/or efficacy data to support Category I status for micronized titanium dioxide (Refs. 9 and 10). One comment stated that micronized titanium dioxide is not a new material but is a selected distribution of existing material that provides higher SPF values while being transparent and esthetically pleasing on the skin. The comments added that micronized titanium dioxide meets all safety and efficacy criteria and also meets the USP specifications for purity except pure water content.

Another comment asserted for the following reasons that micronized titanium dioxide is a new ingredient with several unresolved safety and efficacy issues: (1) It does not meet the definition of a sunscreen opaque sunblock, (2) there is no control of particles to agglomerate, which is critical to effectiveness, (3) no standards exist to ensure integrity of coatings, (4) there are no performance-based standards of identity; micronized titanium dioxide is not included in the USP, (5) its photocatalyst potential, and (6) the potential for the smaller particle size to accumulate under the skin.

The agency finds the data with the comments supportive of monograph status for micronized titanium dioxide. Acute animal toxicity, irritation, sensitization, photoirritation, photosensitization, and human repeat insult patch and skin penetration studies revealed no deleterious effects. SPF values for four product formulations containing from 4.4 to 10 percent micronized titanium dioxide were from 9 to 24 and support effectiveness as a sunscreen ingredient.

The agency is aware that sunscreen manufacturers are using micronized titanium dioxide to create high SPF products that are transparent and esthetically pleasing on the skin. The agency does not consider micronized titanium dioxide to be a new ingredient but considers it a specific grade of the titanium dioxide originally reviewed by the Panel. Fairhurst and Mitchnick (Ref. 11) note that ''fines'' have been part of commercially used titanium dioxide powders for decades, and that a micronized product simply refers to a refinement of particle size distribution. Based on data and information presented at the September 19 and 20, 1996, public meeting on the photobiology and photochemistry of sunscreens (Ref. 12), the agency is not aware of any evidence at this time that demonstrates a safety concern from the use of micronized titanium dioxide in sunscreen products. While micronized titanium dioxide does not meet the proposed definition of a sunscreen opaque sunblock, the agency has not included the use of this term in the final monograph (see section II.L, comment 52 of this document). The potential for titanium dioxide particles to agglomerate in formulation, which could result in lower SPF values, is addressed by the final product SPF test.

The SPF data that the agency reviewed (Ref. 9) did not indicate such a problem.

Micronized titanium dioxide meets current USP monograph specifications for titanium dioxide with the exception that the material contains more associated water. In both the July through August 1996 and 1998 issues of the *Pharmacopeial Forum* (Refs. 13 and 14), the United States Pharmacopeial Convention published in-process revision proposals to make the monograph for titanium dioxide more applicable to ingredients used in sunscreen drug products. The agency will work with the USP in the future to update this monograph as necessary.

20. One comment stated that it is unnecessary to set the maximum limit of titanium dioxide at 25 percent.

The Panel discussed the safety and effectiveness of 2 to 25 percent titanium dioxide in the ANPRM (43 FR 38206 at 38250) and the agency concurred with the Panel's findings in the tentative final monograph (58 FR 28194 at 28295). The comment submitted no data and the agency has no data to support the use of titanium dioxide in sunscreen drug products at concentrations higher than 25 percent.

D. Comments on Dosages for Sunscreen Drug Products

21. Several comments objected to the minimum concentration requirements for sunscreen active ingredients when used in combination because they: (1) Are a less effective measurement of effectiveness than a performance based SPF test, (2) impact on creativity and innovation of new formulations (technological advances since publication of the 1978 ANPRM have resulted in higher SPF values using lower concentrations of active ingredients), (3) increase potential for irritation and allergic reactions due to unnecessarily high concentration levels of active ingredients, (4) contradict FDA's position that the lowest effective dose of an active ingredient be used to produce the desired treatment effect, (5) result in higher manufacturing and consumer costs due to unnecessary levels of active ingredients, and (6) affect international harmonization because Canada, Australia, and the European Union have no concentration minimums for active ingredients when used in combination.

One comment petitioned the agency to amend proposed § 352.20 of the tentative final monograph to include a provision for formulating combination sunscreen products at lower minimum concentrations. Two comments submitted efficacy data to support lower concentrations of sunscreen active ingredients when used in combination. One comment (Ref. 15) submitted in vitro SPF testing data for several different combinations. Although these data showed a statistically significant increased efficacy for lower than minimum concentrations, they were not predictive of the SPF values that would be obtained with human testing and, therefore, were not used to support lower concentrations of sunscreen active ingredients when used in combination. The other comment (Ref. 16) submitted in vivo SPF testing data conducted according to the procedure proposed in the tentative final monograph (58 FR 28194 at 28298 to 28301) in which a selected cross section of active ingredients were tested in pairs by substituting water or the solvent system for the active ingredients. The data were evaluated using a matched pairs comparison statistical hypothesis test procedure and demonstrated that concentrations of sunscreen active ingredients lower than the minimum concentrations proposed in § 352.20(a)(2) for combination products can provide a significant contribution to product effectiveness.

The agency recognizes that technological advances in sunscreen formulation technology since 1978 have resulted in the ability to formulate products with lower concentrations of active ingredients and higher SPF values. The agency also recognizes that final product testing, and not the concentration of the active ingredients in the combination, ensures product effectiveness.

Due to the recent advances in sunscreen formulation and the data referenced previously, the agency is concerned that setting minimum concentration requirements for active ingredients in sunscreen combination drug products could subject consumers to unnecessary levels of active ingredients. Therefore, the agency is only requiring the maximum concentration limits in § 352.10 for sunscreen active ingredients when used in combination with another sunscreen or when the combination is used with any other permitted active ingredient. However, any such ingredient used in combination with one or more sunscreen active ingredients must be consistent with the regulations in § 330.10(a)(4)(iv), i.e., each of the combined active ingredients must make a contribution to the claimed effect, the combining of active ingredients must not decrease the safety or effectiveness of any individual active ingredient, and the combination must provide rational concurrent therapy for a significant proportion of the target population. Although the agency needs assurance that each ingredient is contributing to the effectiveness of the product, it does not want to impose unnecessary testing requirements on sunscreen product manufacturers. Therefore, the agency is removing the minimum concentration requirement for sunscreen active ingredients proposed in § 352.20 and is adding the requirement that: (1) The concentration of each active sunscreen ingredient used in a combination product must be sufficient to contribute a minimum SPF of not less than 2 to the finished product, and (2) the finished product must have a minimum SPF of not less than the number of the sunscreen active ingredients used in combination multiplied by 2.

E. Comments on Labeling and Testing Procedures for UVA Sunscreen Drug Products

22. In the sunscreen tentative final monograph (58 FR 28194 at 28232 and 28233), the agency proposed to allow claims relating to ''broad spectrum protection'' or ''UVA radiation protection'' for sunscreen products: (1) Containing sunscreen active ingredients with absorption spectra extending to 360 nm or above, and (2) that demonstrate meaningful UVA radiation protection using appropriate testing procedures to be developed. The agency received numerous comments concerning such claims and current scientific evidence implicates UVA radiation as a major cause of, among other things, photoaging of the skin (Refs. 17 through 20).

In the **Federal Register** of September 16, 1996, and October 22, 1998, the agency proposed a specific skin damage and premature skin aging claim for sunscreen products containing specific concentrations of avobenzone or zinc oxide based upon the submission of data to support claims of UVA radiation protection in such products. The agency will address comments pertaining to measurement of UVA radiation protection in sunscreen products and related UVA radiation protection claims in a future issue of the **Federal Register**. Until then, UVA labeling may continue in accord with the tentative final monograph and its amendments.

F. General Comments on the Labeling of Sunscreen Drug Products

23. Several comments requested that products containing sunscreen ingredients as an adjunct to their main purpose (e.g., a daily moisturizer or a lipstick with a sunscreen) be considered ''secondary sunscreens'' (intended only for incidental or casual sun exposure), and should be subject to different

labeling requirements from ''primary'' sunscreen products. A number of comments likewise contended that some of the labeling requirements for ''beach'' or ''primary'' sunscreen products are not appropriate for ''non-beach'' or ''secondary'' sunscreen products.

For example, the comments stated that neither the proposed ''Recommended Sunscreen Product Guide'' nor any other references to sunburn or sunburn protection should be required for secondary sunscreens. Some suggested that the warnings be reduced for secondary sunscreens to a statement such as ''For external use only, keep out of eyes. Discontinue use if signs of irritation appear.'' One comment recommended that the statement of identity for a secondary sunscreen should be its cosmetic function, e.g., ''moisturizer.'' Another recommended stating the primary (cosmetic) function first, then the secondary (drug) function, e.g., ''moisturizing face cream with sunscreen (or with SPF ____ sunscreen).''

The comments also suggested that secondary products be permitted to bear certain labeling claims relating to aging, such as ''Helps reduce the chance of skin aging caused by incidental (or casual) exposure to the sun,'' or ''Helps reduce premature aging from incidental (or casual) exposure to the sun.'' Some also requested the option of being allowed to relate skin aging claims directly to sun exposure, to inform consumers more clearly that sun protection is not the primary attribute of the product, e.g., ''Provides moisture to facial skin throughout the day while protecting facial skin from skin aging due to exposure to sun.'' Other comments recommended that the proposed ''Sun alert'' statement or other references to ''skin cancer'' or other cancers should not be required for secondary products.

On the other hand, the agency also received comments opposing the idea of recognizing ''primary'' and ''secondary'' or ''beach'' and ''non-beach'' categories of sunscreen products. One comment stated that any product containing a sunscreen for the purpose of protection from the sun's harmful effects should be held to the same standards as other sunscreen products. Another comment disagreed with the idea of allowing different sets of claims for ''primary'' and ''secondary'' products. According to this comment, claims such as ''Helps reduce the chance of skin aging'' are drug claims and should be regulated as such. Finally, one comment stated that any sunscreen product (primary or secondary) must have an SPF of 15 to 30 or higher to provide adequate protection, whether for continuous beach exposure or everyday (incidental) sun exposure.

The agency agrees that all sunscreen products (whether drug only or drug-cosmetic) should be held to the same standards (e.g., active ingredient(s), testing requirements, and labeling). Regardless of what type of product a consumer chooses for sun protection, the essential information relevant to sun protection is the same. Thus, to ensure that consumers are adequately protected from overexposure to the sun, all products intended for use as sunscreens should have similar labeling requirements, irrespective of their method of use and irrespective of whether the sunscreen use is considered primary or secondary to the product. Consistent with this approach, the agency has developed uniform, streamlined labeling for all sunscreen products (see sections II.I through II.L of this document).

The agency also notes, however, that a number of the labeling issues raised in these comments, including the issue of the ''Recommended Sunscreen Product Guide,'' are addressed elsewhere in this document. In addressing these issues, the agency gave careful consideration to the wide variety of products marketed for sunscreen uses.

Finally, the agency notes that under the recently issued standardized OTC drug product labeling format (§ 201.66 (21 CFR 201.66)), manufacturers will not be allowed to commingle drug and cosmetic claims within the ''Drug Facts'' portion of the labeling.

24. One comment requested clarification of the agency's discussion of the term ''anti-aging'' as a claim or as part of a trade name (58 FR 28194 at 28287). The comment was concerned that products containing no sunscreen active ingredients and no sunscreen claims, but which are sold under ''anti-aging'' trade names, would be subject to regulation under the OTC drug sunscreen monograph.

The use of ''anti-aging'' language in a product that made no sunscreen claims and contained no sunscreen active ingredients would not, as the comment asked, cause the product to fall within the scope of the OTC sunscreen drug monograph. Such a product may, however, be subject to regulation as a drug and as a new drug, under section 201(g)(1) and (p) of the act, or as a cosmetic under section 201(i), or as both a drug and a cosmetic, depending upon all of the circumstances surrounding its distribution. A product that is marketed under the final OTC sunscreen drug monograph, but which uses anti-aging language in the labeling to suggest or imply an unapproved therapeutic or physiologic effect, would likely be subject to regulatory action as an unapproved new drug (58 FR 28194 at 28286 to 28287; see comments 37 and 38 in section II.I of this document).

25. Three comments contended that the terms ''natural,'' ''non-chemical,'' and ''chemical free'' are false and misleading in the labeling of OTC sunscreen drug products. The comments requested the agency to restrict the use of these terms, especially for sunscreen products containing titanium dioxide and zinc oxide.

Generally, the appropriateness of these terms requires case-specific analysis to determine whether their use would render the product false or misleading in any particular (see sections 502(a) and 602(a) of the act). The agency notes, however, that the use of the terms ''non-chemical'' and ''chemical-free'' in the labeling of an OTC sunscreen drug product, to describe the ingredients contained in the product, is likely to be considered unacceptable. Sunscreen drug products contain active (and often inactive) ingredients that have been obtained through a chemical process, or that have been formulated into the finished product through a chemical process. The term ''natural'' is more likely to require context-specific analysis, particularly when used in labeling to describe certain cosmetic aspects or uses of a sunscreen product. The term ''natural,'' however, would not be permitted to appear within the required OTC drug labeling of a sunscreen product and is not considered to be interchangeable with any of the final sunscreen monograph language.

26. Four comments opposed any labeling that a sunscreen product ''does not provide UVA protection,'' contending that FDA's policy does not require disclaimers of broader purposes for which products are not useful. One comment added that an SPF 15 product must block UVA radiation to be effective in preventing sunburn.

Two comments argued that a ''negative warning'' would be useful and necessary to warn and protect consumers and suggested ''Does not provide broad spectrum UVA protection,'' or ''Caution: This product does not provide protection from the recognized dangers of UVA rays which may contribute to skin cancer and other chronic skin disease.''

Labeling should primarily direct consumers towards the purposes for which a product is considered useful. However, in establishing the conditions for the safe and effective use of an OTC

drug product, the agency also must take into account, among other things, the context in which a product is customarily marketed and the potential that consumers may use the product for a use for which it may not be beneficial (see sections 201(n) and 502(a) of the act; § 330.10(a)(3)).

With these factors in mind, the agency will further evaluate whether ''negative warnings'' or disclosure statements are needed when it completes the UVA portion of the sunscreen monograph in a future issue of the **Federal Register**.

27. Four comments contended that the signal words ''Indications'' and ''Directions'' are not needed, take up valuable label space, and should either not be required or be optional, especially for sunscreen-containing drug products that have some ''traditional'' cosmetic uses (e.g., lipsticks).

The agency allows the signal word ''Use'' or ''Uses'' in place of ''Indication'' or ''Indications.'' This short signal word is useful for consumers, appropriate for dual use products, and does not clutter label space. Likewise, the agency concludes that the signal word ''Directions'' is useful for consumers and does not clutter label space (64 FR 13254 at 13264 to 13268, March 17, 1999). The agency is including § 352.52(f) in this final monograph to provide labeling modifications for sunscreen products that meet the small package specifications in § 201.66(d)(10) and are labeled for use on specific small areas of the face (e.g., lips, nose, ears, and/or around eyes). These products include many traditional cosmetics (e.g., lipstick or eye makeup) that may contain sunscreens. These products will be allowed to present a condensed ''Uses'' section and may omit directions for use if they are marketed in a lipstick form.

28. One comment requested that the monograph include professional labeling for both UVB and UVA radiation protection to assist health professionals to select appropriate products. The comment recommended inclusion of the absorption spectrum of each sunscreen in the product and suggested that the labeling include information that the product: (1) Protects against drug-induced photosensitization reactions induced by UV radiation in the ranges ____ nm to ____ nm, and (2) other truthful and nonmisleading statements describing both UVB and UVA radiation protection against photosensitization reactions.

The agency did not propose professional labeling in the tentative final monograph, but did ask for data to be submitted (58 FR 28194 at 28210 and 28245). No data were received. The agency will consider including this type of professional labeling in the monograph in the future when specific supportive data are provided.

G. Comments on Sunscreen Drug Products With High SPF Values

29. Numerous comments objected to the proposed maximum SPF value of 30 for OTC sunscreen drug products. The comments requested either that the agency adopt no limit or a limit of SPF 50, for the following reasons: (1) UV radiation exposure is increasing due to both lifestyle changes and depletion of the atmospheric ozone layer, (2) skin cancer rates are increasing and there is no safe threshold to prevent cancer, (3) people using an SPF 30 sunscreen will have slight sunburn after receiving their 30 MED and therefore should have available sunscreens with higher SPF values, (4) high SPF sunscreens are needed for extremely sun-sensitive people during periods of unavoidable intense or lengthy sun exposure, and because of less than ideal usage by consumers due to misjudging of their skin type and/or inadequate/infrequent application, (5) there is a significant variation of skin types, sensitivities, and UV radiation exposures among people, (6) formulation techniques can increase SPF values without necessarily increasing ingredient concentrations, (7) current information does not support an association between high SPF products and safety concerns, and (8) high SPF products provide for greater relative exposure times and decreased UV radiation transmission. Three comments (Refs. 21, 22, and 23) submitted supporting data.

Some comments stated that ''High SPF'' (i.e., above SPF 30) products are on the market and used by consumers, and that limiting SPF values would stifle sunscreen product development and preventative health benefits. Other comments argued that sunscreens with high SPF values provide increased protection from ultraviolet radiation effects such as photoimmunosuppression and are needed by those with ''dermatological problems.''

In contrast, some comments supported the agency's proposal to limit SPF values to 30 to stop the promotional ''bidding war'' or ''horsepower race.'' Another comment contended that real consumer benefit is achieved through appropriate balance of SPF, substantivity, UVA radiation protection, irritation potential, and cost, whereas SPF values above 30 provide only ''incremental benefit'' and an unnecessary increase in drug exposure.

The data provided by the comments in support of allowing numerical values above 30 were of only limited use. Data from a field survey of 62 sunbathers on Miami's South Beach during July 1993 (Ref. 21) did not provide any reliable conclusions on the frequency or extent of solar overexposure by light-skinned individuals or a benefit provided by sunscreen products with an SPF value above 30 as: (1) The sample size was small and the survey population did not represent a random sample, (2) the MED was not determined under controlled conditions or standardized procedure, and (3) full-day UVB radiation exposure was based on crude extrapolation of weather data.

Data from MED determinations on 1,332 people with skin types I, II, and III, and UV radiation data for the month of June 1974 in 5 cities in the United States (Ref. 22), support the contention that a sizeable population may exist that is at risk to more than 30 MED's of UV radiation per day. However, the data are insufficient for extrapolation to the general population. The small sample size in this study limits the sensitivity of the study and the study population did not represent a random sample.

Finally, data from animal studies (Ref. 23) showed that: (1) Limiting sunscreen protection to SPF 30 may not be prudent if UV radiation damage is not related to SPF; (2) a greater amount of sunscreen is needed to completely inhibit some of the nonerythemogenic damage caused by UV radiation, and (3) nonerythemogenic effects (e.g., photoimmunosuppression) occur with suberythemal doses of UV radiation (as can be obtained with the use of low or high SPF sunscreens). While the agency agrees that higher SPF values may provide for greater relative exposure times, the SPF test is not the appropriate measurement of protection from nonerythemogenic damage because SPF is only a measure of erythema. The agency finds that the data from these studies were not sufficient to either support or dismiss limiting the maximum SPF value in this final rule.

The agency continues to agree with the comments about overall increases in both UV radiation exposure (58 FR 28194 at 28223), skin cancer rates (58 FR 28194 at 28227), and the variation of skin types, sensitivities, and UV radiation exposures among people (58 FR 28194 at 28222). The agency also agrees with the comment that a person using an SPF 30 sunscreen could have a slight sunburn after being exposed to their 30 MED (i.e., after their skin receives a MED). However, the agency continues to believe that an SPF 30 sunscreen product provides adequate

protection for the majority of consumers even under extreme conditions, less than ideal usage, or in varying weather conditions (58 FR 28194 at 28225).

On the other hand, the agency is also aware that many OTC sunscreen products with SPF values above 30 are currently marketed and are increasingly used by consumers. Numerous comments from health professionals, consumers, and industry provide actual use information in support of SPF values above 30 for what may be a substantial number of sun-sensitive people in this country. Further, as numerous comments noted: (1) There is a lack of data to correlate higher than SPF 30 sunscreen products with corresponding safety problems, and (2) modern formulation techniques have resulted in higher SPF values using lower active ingredient concentrations.

Because of the numerous concerns from health professionals, new data to support the need for SPF values above 30, and the lack of data concerning safety problems with such SPF values, the agency concludes that OTC sunscreen drug products with SPF values above 30 should be available for those sun-sensitive consumers who require such products based upon personal knowledge of their skin's susceptibility to sunburn, experience with specific products, planned sun exposure, or the recommendation of a health professional. The agency agrees with the comments that higher SPF values generally can provide for greater relative exposure times and decreased UV radiation transmission. However, the agency continues to believe that the additional sunburn protection provided by an SPF 30 sunscreen and, e.g., an SPF 50 sunscreen (i.e., about a 1.3 percent increase in absorption of erythemal UV radiation) is extremely small for most people. The agency is also concerned about the ability of current testing methods to accurately and reproducibly determine SPF values for high SPF products (see section II.M, comment 53 of this document). In addition, nonlinearity of the SPF rating system is a concept difficult to explain in the limited space on a product label. Therefore, the agency concludes that the label SPF declaration for sunscreens with SPF values above 30 should be limited to one collective term, which appears in § 352.50(a) of this document as follows: ''*For products with SPF values over 30*. ''SPF 30'' (select one of the following: ''plus'' or ''+''). Any statement accompanying the marketed product that states a specific SPF value above 30 or similar language indicating a person can stay in the sun more than 30 times longer than without sunscreen will cause the product to be misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act).''

Numerous comments from dermatologists asked that a specific SPF 50 product be allowed to remain on the market because it is needed for the ''ultrasensitive patient'' and for patients with ''dermatological problems.'' The agency has previously discussed the use of high SPF sunscreen drug products to protect consumers with photosensitivity diseases (58 FR 28194 28225) and the need to provide data for such uses (see section II.F, comment 28 of this document) as the absorption spectrum of a specific product, not necessarily the SPF, may be the more clinically significant factor for such people.

As discussed previously in this comment 29 of section II.G of this document, the agency has concluded that the use of SPF label values above 30 in OTC drug products is not supported at this time. The agency, however, invites interested persons to continue developing the test methods needed to measure high SPF values, and to submit the data in support of such methods to FDA. If test methods are developed, the agency also invites interested persons to consider proposed methods for communicating in labeling the level of protection associated with high SPF values (given the nonlinear nature of the SPF rating system). These and other well-supported improvements to the methodology for accurately and reproducibly measuring SPF values will be addressed, as appropriate, in future issues of the **Federal Register**. Until then, OTC sunscreen drug products are permitted to be labeled with SPF values no higher than ''30+'' or ''30 plus.''

Finally, the agency does not agree with the argument that limiting SPF values would stifle sunscreen product development and preventative health benefits. Undue emphasis for sunburn protection should not be placed upon SPF value alone (i.e., ''single focus products''). As noted by another comment, consumer benefit is achieved through appropriate balance of several factors, including substantivity, UVA radiation protection, and irritation potential.

H. Comments on Water Resistant Labeling and Testing for Sunscreen Drug Products

30. One comment agreed and several disagreed with proposed § 352.52(e)(2)(iii) and (e)(3)(iii) concerning sweat resistant claims based upon water resistance testing instead of a specific sweat resistance test. One comment submitted data from two sweat resistance studies and two water resistance studies (Ref. 24) utilizing methods proposed by the Panel in the ANPRM (43 FR 38206) and involving a total of 117 subjects. The comment concluded that the water resistance test is less stressful than the sweat resistance test.

The agency does not find the data submitted in the studies sufficient to support the comment's contention. The studies each comprised distinct subject populations and addressed a single variable, i.e., the effect of water exposure or induced sweating on a product's SPF. Therefore, a comparison of mean SPF values across studies is not the appropriate measure of relative ''stress'' associated with these variables. The agency believes that a randomized, two-period crossover study design in a single patient population would better have addressed the comment's contention. Further, the Panel's sweat and water resistance protocols provide qualitative information and were not designed to provide comparative assertions requiring valid statistical inferences. Thus, the agency is allowing water and sweat resistant claims based upon the water resistance test procedures in § 352.76 of this document.

31. One comment contended that the ''water resistant'' labeling proposed in § 352.50(b)(1) and (c)(1) should not be required for products labeled or purchased for uses other than swimming or bathing.

The agency notes that the water resistance statements referenced by the comment were not required unless the manufacturer wished to make water resistant claims in the labeling of its sunscreen products. This final rule also will not require a manufacturer to make a water resistance claim for its sunscreen product, even if the product is determined to be water resistant. However, a manufacturer wishing to make water resistance claims must comply with §§ 352.50(b) or (c) and 352.52(b)(1)(ii) or (b)(1)(iii) of this document, as applicable for ''water resistant'' or ''very water resistant'' products.

32. Several comments urged the agency to return to the ''waterproof'' and ''water resistant'' label claims proposed by the Panel and to limit the labeled SPF value to only the SPF after water resistance testing. Another comment requested only general guidelines for claims such as ''water resistant'' or ''sweat resistant'' on the basis that such claims reflect the inherent characteristics of specific formulations and not sunscreen ingredients.

The agency thoroughly discussed use of the terms ''waterproof'' and ''water resistant'' in the tentative final monograph (58 FR 28194 at 28228). The comments did not present any arguments or data that the agency did not previously consider. In addition, the agency points out that performance claims such as these for OTC sunscreen drug products are based on final product formulation.

The agency agrees with the comments that the more relevant SPF value for products labeled ''water resistant'' or ''very water resistant'' is the SPF value of the final product formulation following water resistance testing. Therefore, in this document the agency is limiting the SPF label declaration to the SPF after water resistance testing and is modifying the testing procedures in § 352.76 to reflect deletion of the proposed dual SPF testing requirement for sunscreen products with water resistant claims.

33. Two comments suggested that ''water resistant'' labeling be permitted for drug products retaining at least 80 percent of their SPF value after static testing in pools and that any product meeting this criterion could also be labeled ''sweat proof.'' The comments further suggested that the term ''very water resistant'' should be permitted for products retaining 90 to 98 percent of their SPF after testing.

The agency disagrees with the comments. Simple immersion provides neither an aqueous shear stress nor thermal challenge, and thus is an inadequate assessment of water resistance. In addition, no justification was offered for the respective threshold values of 80 percent and 90 to 98 percent.

34. Several comments contended that the water resistance testing procedures in § 352.76 should be amended to allow for continuation of the water exposure regimen beyond the 80 minute total and suggested that the ''very water resistant'' claim be expanded beyond 80 minutes for products meeting such testing requirements. One comment provided data (Ref. 24) to support extended water resistance claims. Another comment also proposed a testing protocol (Ref. 25) for an additional claim of ''rubproof'' or ''abrasion proof.''

The agency does not concur with an expansion of the ''very water resistant'' claim. Although data submitted by the comment (Ref. 24) show that under testing conditions products may retain their SPF values for up to 270 minutes of water exposure, no usage data were presented to refute the Panel's determination of an 80 minute upper exposure limit (58 FR 28194 at 28277). In addition, the agency believes that for consumers to compare products with multiple performance characteristics, a labeling claim of ''very water resistant'' is best supported by a uniform testing standard. Should the agency receive data in the future indicating customary usage patterns in excess of 80 minutes of water exposure, it will reconsider this limit.

35. One comment disagreed with the agency's proposal in the tentative final monograph (58 FR 28194 at 28278) that manufacturers determine the waiting periods for the most effective use of their sunscreen products (i.e., the time between application and exposure to the sun or water, if applicable). This information would then be included in the directions for the product. The comment asserted there is no reason to require a ''time versus efficacy'' study for every sunscreen formula because studies show that products maintain their efficacy for up to 8 hours.

In the tentative final monograph, the agency did not propose a specific method or testing procedure for the determination of a proper waiting period because of the variation in sunscreen product dosage forms and formulations. Instead, the agency allowed manufacturers to make this determination. However, the agency did propose in § 352.52(d)(2) that a waiting period before sun or water exposure, if applicable, be included in the labeling of sunscreen products for their most effective use. In this final rule, the agency has included the requirement for a waiting period in the sunscreen product application statement in proposed § 352.52(d)(1) for the reasons stated in the tentative final monograph (58 FR 28278). The agency continues to allow the manufacturer to determine both the necessity for this statement (based on the product's formulation and dosage form) and how the waiting period, if applicable, is determined.

I. Comments on Indications for Sunscreen Drug Products

36. One comment urged the agency to more strongly state the effectiveness of sunscreens (a specific claim was not suggested). The comment cited a controlled study of a broad spectrum, SPF 17 sunscreen on 431 Caucasian subjects over one summer in Australia (Ref. 26). The study showed that the group using the sunscreen had significantly fewer solar keratoses and more remissions than the control group. Another comment expressed concern that use of the term ''help prevent skin damage'' may mislead consumers to think that these products prevent skin cancer and premature skin aging.

The agency agrees that solar keratoses are a clinical sign of skin damage. However, although sunscreens are associated with a statistically significant decrease in solar keratoses after 1 or 2 years, the solar keratoses reduction in this study was small and neither the clinical nor biological significance of this reduction has been established. Most solar keratoses never become skin cancers and typically resolve spontaneously (Refs. 27 and 28).

Because of the wide variability possible in the formulation of sunscreen products, not all sunscreen products are identical in their UV radiation absorption characteristics. Sunscreen products may contain active ingredients that absorb in different regions of the UVB radiation spectrum (the primary cause of sunburn) or absorb in both the UVB and different regions of the UVA radiation spectrum. Therefore, even the degree/type of UV radiation protection reported in one study using a specific sunscreen formulation may not be relevant to all possible sunscreen products within the scope of this final monograph. Further, the agency does not believe that it is prudent to extrapolate claims for skin cancer or skin aging based upon a test designed to only measure erythema (i.e., the SPF test).

The agency has reviewed information concerning the mechanisms of skin cancers and photoaging. UV radiation appears to have a dual role in the induction of skin cancers as it can cause several varieties of direct DNA damage (Refs. 23 and 29 through 32) plus suppress the immune response to developing skin cancers (Refs. 33 through 37). This immune suppression may be a critical variable as skin cancers, unlike other cancer types, evoke a strong immune response (especially by Langerhans cells and T-lymphocytes) (Ref. 38). In photoaging, there are multiple sites in the skin that can be damaged by UV radiation (Ref. 17). For example, recent studies support the concept that specific UV radiation-induced enzymes (i.e., matrix metalloproteinases) can mediate connective tissue damage and result in the premature aging effects seen in skin exposed to UV radiation (Refs. 19 and 20). These data also suggest that these mechanisms of carcinogenesis and photoaging can occur from doses of UV radiation below that required to produce sunburn (i.e., suberythemal doses). Thus, even if no sunburn has occurred with the use of a sunscreen, the consumer cannot assume that sun-induced skin damage that might contribute to the eventual development

of skin cancer or signs of photoaging has not occurred.

The agency agrees with the comment that terms such as ''help prevent skin damage'' may mislead consumers to think that sunscreen use alone will prevent skin cancer and premature skin aging. However, the agency believes that an appropriate statement can be used to inform consumers that sunscreens may reduce the risks of skin aging, skin cancer, and other harmful effects from the sun when used in a regular program that includes limiting sun exposure and wearing protective clothing (see section II.L, comment 51 of this document).

37. Several comments expressed concern that the statements ''Allows you to stay in the sun up to (insert SPF of product up to 30) times longer than without sunscreen protection'' and ''Provides up to (insert SPF of product up to 30) times your natural protection from sunburn'' in proposed § 352.52(b)(1)(iii) and (b)(1)(iv) may mislead consumers as to the amount and degree of protection sunscreen products provide. The comments were concerned that this message will convey a more expansive meaning than intended and that consumers might be misled about how long they can stay in the sun without risking any sun-induced skin injury. One comment expressed additional concern because the SPF value is only a laboratory test of a few minutes duration.

One comment also objected to the unqualified use of terms such as ''shields from,'' ''protects from,'' ''filters'' or ''screens out'' the ''sun's rays,'' ''sun's harsh rays,'' or ''sun's harmful rays'' to ''help prevent skin damage'' proposed in § 352.52(b)(1)(v) and (b)(1)(vi). The comment expressed concern that these unqualified terms could imply complete protection from the sun's harmful rays and may mislead consumers by inducing a false sense of security when using sunscreen products.

As discussed in section II.I, comment 36 of this document, the agency believes that sunscreen use alone will not prevent all of the possible harmful effects due to the sun. Variation between individuals, UV radiation absorption and substantivity of sunscreen products, exposure conditions, and conditions of use cannot promise a precise result for each individual. Thus, the agency agrees that these statements could provide the wrong message and a false sense of security to some consumers. The agency therefore is not including proposed § 352.52(b)(1)(iii) through (b)(1)(vi) in this final rule and considers these and similar statements to be nonmonograph. For the same reasons, the agency also considers extended wear claims concerning a specific number of hours of ''protection'' (or similar terminology) or an absolute claim such as ''all-day protection'' to be nonmonograph. Instead, the agency is including an accurate, simpler, and less confusing indication statement in this final rule using two bulleted statements under the ''Uses'' heading, as follows: ''[bullet] helps prevent sunburn'' and ''[bullet] higher SPF gives more sunburn protection''.[1]

38. Several comments contended that terms such as ''skin aging,'' ''wrinkling,'' ''premature skin aging,'' or ''photoaging'' should be permitted as indications for sunscreens, especially if protection is provided in the UVA II (320 to 340 nm) radiation region. One comment suggested that a label claim such as ''Helps reduce the chance of skin aging caused by incidental (or casual) exposure to the sun'' may help to further position the product as a cosmetic for consumers. The comment also suggested an indication statement: ''Excessive, chronic sun exposure can lead to premature photoaging of the skin, characterized by drying, wrinkling and thinning of the skin. Regular use of a sunscreen can help protect against this condition.''

The agency discussed the use of terms such as ''skin aging,'' ''wrinkling,'' ''premature skin aging,'' or ''photoaging'' on sunscreen products in the tentative final monograph (58 FR 28194 at 28236 and 28287). As discussed in the response to comments 36 and 37, the agency has determined that the labeling should describe the product's use in preventing sunburn. A more expansive set of indications is currently unsupported. The agency notes, however, that the final ''Sun alert'' statement (discussed in section II.L, comment 51 of this document) does provide the consumer with information about the role of sunscreens in reducing skin aging, in a context that ensures that the information will not be misleading. The agency, however, is continuing to consider whether certain sunscreens may provide protection against photoaging (58 FR at 28287) and has discussed this in tentative final monograph amendments for certain sunscreens containing avobenzone or zinc oxide based upon specific data submitted to the agency (see section II.E, comment 22 of this document). The agency will evaluate this issue further when it completes the UVA portion of the sunscreen monograph, in a future issue of the **Federal Register**.

[1] See § 201.66(b)(4)

39. Several comments contended that the extensive labeling proposed in the tentative final monograph was excessive. For environmental concerns, the comments objected to the use of extra packaging materials as a method of including added labeling. One comment disagreed with the need for a specific statement of product indications on individual units of non-beach products properly labeled with an SPF value, and cited limitations on labeling space. The comment suggested that manufacturers be given the option to provide off-package information at the point-of-sale rather than be required to place the statement(s) on each individual unit of the product.

To balance the environmental and regulatory concerns, the agency has streamlined labeling in this final monograph by significantly reducing the amount of required labeling and making optional other labeling that was proposed as required in the tentative final monograph. The agency is also including § 352.52(f) in this final monograph to provide for additional labeling accommodations for sunscreen products that meet the small package specifications in § 201.66(d)(10) and are labeled for use on specific small areas of the face (e.g., lips, nose, ears, and/or around eyes) (see section IV, comment 6 of this document).

J. Comments on Warnings for Sunscreen Drug Products

40. One comment asked the agency to permit reduced warning statements for lip balm products containing sunscreens based on their safe market history. The comment argued that lip balms are not applied to the eye area, and thus extensive eye warnings are not required. Two comments cited the long history of safe use of lipstick products containing sunscreens and suggested the reduced warning, ''Discontinue use if signs of irritation appear.''

The agency discussed its rationale for proposing an eye warning for sunscreen-containing lip balms in comment 52 of the tentative final monograph (58 FR 28194 at 28229 to 28232), noting that some lip balms could be used on other areas of the face. However, the agency has received neither data concerning adverse reactions due to the use of sunscreen-containing lip balms near the eyes, nor information that such products are normally used in the eye area. These products also are consistent with the factors described in the final OTC standardized content and format labeling rule (64 FR 13254 at 13270) for considering additional labeling modifications. Accordingly, this final monograph allows sunscreen-containing

lipsticks to omit the eye warning in proposed § 352.52(c)(1)(i). As discussed in Section II.J, comment 42 of this document, the wording of this warning is modified in this final monograph. For lip balms, the agency expects to adopt the same modification when it issues the final monograph on OTC skin protectant drug products.

The proposed warning in § 352.52(c)(1)(iii) is now stated as a bullet under the ''Stop use and ask a doctor if'' subheading as follows: ''[bullet] rash or irritation develops and lasts.'' This warning appears in § 352.52(c)(1)(ii) in this document. Finally, lipsticks (and lip balms, which will be addressed in the final monograph on OTC skin protectant drug products) will not be required to bear the ''For external use only'' warning. Accordingly, in this final monograph, § 352.52(c)(2) allows lipsticks to omit the warning in § 201.66(c)(5)(i).

41. One comment requested that an eye irritancy warning need not be required for products that contain titanium dioxide as the sole active ingredient. The comment stated that titanium dioxide is an inert inorganic oxide (and thus is chemically distinct from all other Category I sunscreen active ingredients, which are organic compounds) and is an FDA approved color additive for the eye area in both drugs and cosmetics. The comment argued that determination of eye irritancy should be based on total product formulation. A second comment concurred that the labeling for inorganic sunscreens, which are not eye irritants, should be differentiated from organic sunscreens, which may be irritants in the eye.

The agency agrees that the eye warning (proposed in § 352.52(c)(1)(ii)) is based on total formulation, not simply presence of an ingredient. The agency's rationale was discussed in comments 52 and 62 of the tentative final monograph (58 FR 28194 at 28229 to 28232 and 28241). Accordingly, this final monograph requires all sunscreen-containing drug products to bear the eye warning in § 352.52(c)(1)(i). Only products formulated as a lipstick (and lip balms, which will be addressed in the final monograph on OTC skin protectant drug products) may omit this warning (see § 352.52(c)(3) of this document). The agency will consider omitting the eye warning requirement for a particular formulation if data submitted in an NDA deviation (§ 330.11 (21 CFR 330.11)) from the sunscreen monograph demonstrate it is not an eye irritant.

42. One comment suggested restating the proposed warnings in § 352.52(c)(1) more concisely, as follows: ''For external use only. Keep out of eyes. If contact occurs, rinse thoroughly with water. If irritation or rash occurs, discontinue use. Consult a doctor if problem persists.''

Since the tentative final monograph was published, the agency has published a final rule revising the format and content requirements for OTC drug product labeling (64 FR 13254). Section 201.66(c)(5)(i) requires the warning ''For external use only'' for all topical drug products not intended for ingestion. Therefore, it is not necessary to state that warning in this document and the warning in proposed § 352.52(c)(1)(i) is not included in this final monograph. The agency is shortening the proposed warning in § 352.52(c)(1)(ii). This warning appears in § 352.52(c)(1)(i) in this document as a bullet under the ''When using this product'' subheading as follows: ''[bullet] keep out of eyes. Rinse with water to remove.'' The agency is stating the proposed warning in § 352.52(c)(1)(iii) as a bullet under the ''Stop use and ask a doctor if'' subheading as follows: ''[bullet] rash or irritation develops and lasts.'' This warning appears in § 352.52(c)(1)(ii) in this document. Section 201.66(c)(5)(x) requires the ''Keep out of reach of children'' and accidental ingestion warning set forth in 21 CFR 330.1(g) for these products.

43. One comment contended that the proposed warning about swallowing in § 352.52(c)(1)(i) would not be needed for so-called secondary sunscreen products because adults using these products (which, according to the comment, have traditionally been marketed as cosmetics) would know not to ingest them.

As discussed in section II.J, comment 42 of this document, the warning proposed in § 352.52(c)(1)(i) has been superseded by the warning required by § 201.66(c)(5)(i). The new required warning no longer contains the statement about not swallowing the product.

K. Comments on Directions for Sunscreen Drug Products

44. Two comments stated that the proposed directions in § 352.53(d)(4) for lipsticks and make-up preparations are unnecessary because these products are marketed primarily for their cosmetic uses, which are self-evident. One comment contended that it is unlikely that consumers will modify their habits of lipstick application and usage simply because the product contains a sunscreen. The other comment argued that failure to follow directions for these products is unlikely to have serious consequences.

The agency has determined that directions for use in the labeling of lipstick products containing sunscreens would provide minimal benefit to consumers and the omission of a directions statement is not likely to have serious consequences (see section II.J, comment 40 of this document). However, the agency believes that directions would be useful for make-up products containing sunscreens because of the wide variety of make-up products that are available. Therefore, the agency is revising proposed § 352.52(d)(4) to read: ''*For products formulated as a lipstick*. The directions in paragraphs (d)(1) and (d)(2) of this section are not required.'' The agency expects to finalize the same modifications for lip balm products when it finalizes the monograph for OTC skin protectant drug products.

45. Several comments contended that the proposed direction, ''Children under 2 years of age should use sunscreen products with a minimum SPF of 4,'' is misleading and has no scientific basis. Some comments stated that the direction implies that an SPF 4 may be adequate for children and noted that the Skin Cancer Foundation advises use of SPF 15 or higher for both children and adults. The American Academy of Dermatology questioned why children should not have the benefit of a more highly protective sunscreen. Other comments suggested that this direction should only be required for products with an SPF lower than 4 because it would be nonsensical and a waste of label space on products with higher SPF values.

The agency agrees with the comments that this direction could mislead parents into believing SPF 4 is adequate for children under 2 years of age. Therefore, the agency concludes it is not appropriate and is not including it in § 352.52(d) in this document.

46. One comment stated that the words, ''adults and children 6 months of age and over'' in proposed § 352.52(d)(1) are unnecessary because there is a separate statement, ''Children under 6 months of age: consult a doctor.'' Another comment suggested that lengthy directions for use by children 6 months to 2 years of age are not appropriate for many product types (e.g., a daily facial moisturizer with a sunscreen) and should be revised to ''For adult use only.'' Another comment added that when ''For adult use only'' is used, then warning and cautionary statements concerning use by children would not be needed.

The agency agrees with the comment that the statement, ''Children under 6 months of age: consult a doctor,'' provides sufficient information regarding the age limit for use and is retaining it under § 352.52(d) as a bullet with a small modification as follows: ''[bullet] children under 6 months of age: ask a doctor''. Therefore, the agency is removing the phrase, ''Adults and children 6 months of age and over.'' The proposed directions for children 6 months to 2 years of age referred to by the comments in § 352.52(d)(1), (d)(2), (d)(3), and (d)(5) stated: ''Children under 2 years of age should use sunscreen products with a minimum SPF of 4.'' As discussed in section II.K, comment 45 of this document, the agency concluded that this direction was misleading and did not include it in § 352.52(d) in this document. The agency finds it unnecessary to include the direction ''For adult use only'' in this document because there are only two age groups in the directions: Children under 6 months of age and all other users of the product.

47. One comment argued that the direction ''apply generously'' may be responsible for some skin irritation complaints from consumers. However, the comment did not provide data to support its position. The comment contended that application of smaller amounts of sunscreen may provide adequate coverage, but that in the case of sun protection, it may be best to err on the generous side. Another comment maintained that applying too little sunscreen may significantly lower protection in a geometric rather than a linear fashion, e.g., an SPF 25 sunscreen applied half as thick as the amount applied for the SPF test may only have the effect of SPF 8.

The agency agrees with the comments that adequate sunscreen should be applied to achieve full labeled SPF protection. Therefore, the agency concludes that the directions in § 352.52(d)(1) of this final monograph to apply ''liberally'' or ''generously'' convey the appropriate message to ensure that consumers adequately apply the sunscreen.

48. One comment stated that the agency should permit firms to provide reapplication instructions based on substantiation information the firm possesses. The comment noted that some products may not need to be applied as frequently as some select time period.

The agency is including a general reapplication direction in § 352.52(d)(2). Manufacturers who have data to support reapplication instructions based on specific substantiation information may submit that information for approval via an NDA deviation as provided in § 330.11.

L. Comments on Product Performance Statements for Sunscreen Drug Products

49. Several comments recommended revisions to proposed § 352.52(e), the statement on product performance. For example, some comments suggested that multiple superlative category designations (e.g., ''high,'' ''very high,'' and ''ultra high'') may foster consumer confusion about the level of protection each SPF provides. Other comments stated that the current SPF scale does not encourage consumers to use higher SPF products. Other comments disagreed with the indication ''permits no tanning.''

The agency has revised proposed § 352.52(e) in this document by condensing the five proposed product categories to three broader ones, and has generalized the category designations. The new categories are: minimal sunburn protection for products with SPF 2 to under 12; Moderate sunburn protection for products with SPF 12 to under 30; high sunburn protection for products with SPF 30 or above. These product category designations (PCD) should appear under the ''Other information'' heading and may also appear on the PDP. Further, products are now described as providing minimal, moderate, or high protection against tanning, thus deleting the reference to tanning prevention that was proposed in § 352.52(b)(2)(v)(B).

50. Many comments opposed the ''recommended sunscreen product guide'' in proposed § 352.52(e)(4). Some comments noted that the guide is incomplete because it only considers skin type and not duration of exposure, season, geographic location, and other factors that influence choice of product. Other comments stated that the guide is deceptive and may encourage inappropriate use of lower SPF's for protection. Several comments stated that labeling for many products is too small to accommodate the guide. Other comments suggested that information in the guide should be disseminated to consumers through point of sale, television, and weather programs, rather than being required in product labeling.

The agency recognizes that various factors influence the purchase of a sunscreen product, including skin type, geographic location, hours exposed to the sun, and sun reflections. While the product guide was intended as a general guidance for using these products, the agency acknowledges that the guide is incomplete and could be confusing and misleading to consumers. Accordingly, the agency is not including the recommended sunscreen product guide in this document.

51. Many comments requested that the ''Sun alert'' in proposed § 352.52(e)(6) be voluntary instead of required labeling and suggested this information could better be disseminated at the point of purchase or through consumer education programs. Some comments stated that the ''Sun alert'' is too weak and suggested alternate language. One comment observed that the ''Sun alert'' fails to warn consumers that UV radiation may harm the immune system, impairing the body's ability to fight infectious disease. The comment did not provide data to support this claim.

The agency agrees that the ''Sun alert'' should be optional on product labeling. Further, the agency has reevaluated the ''Sun alert'' and concludes that its purpose should be to describe the role of sunscreens in a total program to reduce harmful effects from the sun. Marks (Ref. 39) has noted that sunscreens ''are normally recommended for use as an adjunct to other protection,'' such as clothing, hats, and avoidance of the sun near midday. The agency agrees with this concept, as do many researchers (Ref. 40), the American Academy of Dermatology (Ref. 41), Centers for Disease Control (Ref. 41), and the Governments of Australia and New Zealand (Ref. 42). For this reason, the agency has revised the ''Sun alert'' to include other protective actions consumers can take, and has clarified possible results. The agency is including skin cancer in the ''Sun alert'' instead of the body's ability to fight infectious disease because, to date, skin cancer is the best documented adverse effect of UV radiation on the immune system (Ref. 43). Accordingly, § 352.52(e)(2) in this document provides the following optional ''Sun alert,'' which should appear under the ''Other information'' heading and may also appear on the PDP: ''Limiting sun exposure, wearing protective clothing, and using sunscreens may reduce the risks of skin aging, skin cancer, and other harmful effects of the sun.'' The agency encourages sunscreen manufacturers to voluntarily include this ''Sun alert'' in the labeling and to otherwise make it available at point of purchase and through consumer education programs.

52. Several comments suggested that the term ''sunblock,'' proposed in the definition in § 352.3(d) and as a labeling statement for products containing titanium dioxide that provide an SPF of 12 to 30 in § 352.52(e)(5), not be included in the final monograph. Some

comments argued that the term is unclear and may mislead and confuse consumers into thinking that the product blocks all of the sun, when in fact it does not. One comment stated that no product available totally blocks sun damage. Numerous other comments contended that the term ''sunblock'' should be applied to all sunscreen ingredients that provide an SPF of 12 or higher, as such products block at least 90 percent of the sun's UV rays. One of the comments submitted a study (Ref. 44) to show that micronized titanium dioxide absorbs short wavelength UV radiation and reflects and scatters long wavelengths, thereby functioning similarly to chemical UVB radiation sunscreens. The comment contended that the method in which micronized titanium dioxide performs as a sunscreen active ingredient further justifies the use of the term ''sunblock'' for all sunscreen products with an SPF of 12 or higher.

The agency has decided not to include the term ''sunblock'' in the final monograph and now considers this term nonmonograph. The agency's intention in the tentative final monograph was to provide information to consumers on the method of product performance, not to imply greater protection from using a product labeled as a ''sunblock.'' The agency is concerned that the term ''sunblock'' on the label of sunscreen drug products will be viewed as an absolute term which may mislead or confuse consumers into thinking that the product blocks all light from the sun. For example, consumers might view an SPF 15 product labeled as a sunblock as superior to a product labeled as an SPF 30 broad spectrum sunscreen. As nonmonograph labeling, the term ''sunblock'' cannot appear anywhere in product labeling.

In addition, the proposed definition of ''sunscreen opaque sunblock'' in § 352.3(d) applied only to titanium dioxide and is inconsistent with how micronized titanium dioxide functions as an sunscreen active ingredient (Ref. 44). Further, it is the radiation from the UV portion (290 to 400 nm) of the sun's spectrum that reaches the earth's surface and may produce skin erythema, melanogenesis, and cancer. The agency believes that claims of protection beyond 400 nm (i.e., protection from visible and infra red light) are nonmonograph and not within the scope of this document. Therefore, to provide clear and consistent labeling, the agency is not including proposed §§ 352.3(d) and 352.52(e)(5) in this document.

M. Comments on Testing Procedures for Sunscreen Drug Products

53. Several comments questioned the ability of current testing methods to accurately and reproducibly determine SPF values for high SPF products. Some comments contended that the spectra of currently used solar simulators (especially around 290 nm and above 350 nm) could cause overestimation of SPF for high SPF sunscreens and recommended use of a specifications table that provided percent of erythemal contribution by wavelength regions. Other comments submitted data in support of a high-SPF sunscreen control following concerns expressed by the agency in the proposed rule (58 FR 28194 at 28253 and 28254) that data were not sufficient to demonstrate that the testing methods used to evaluate sunscreen drug products with SPF values up to 15 are equally applicable to evaluating sunscreen drug products with SPF values above 15. Several comments submitted data and information that questioned the ability of current testing methods to accurately and reproducibly determine SPF values for high SPF products and requested significant changes to proposed subpart D of § 352.70. Other comments requested changes to the testing procedures proposed in subpart D of the sunscreen monograph that were unrelated to products with high SPF values.

The agency believes that the test method proposed in the tentative final monograph (TFM), for measuring SPF values up to 30, represents at this time a straightforward, well-understood, and sound method for measuring these values. The agency therefore is finalizing the method proposed in the TFM. The agency recognizes, however, that testing methods in this area are evolving and that a number of comments raised useful ideas for proposed improvements in the accuracy and reproducibility of the agency's methodology. As discussed in response to comment 29 of section II.G of this document, the agency is also inviting interested persons to continue working on improving SPF testing methods, toward the development of accurate methods for measuring high SPF values. In future issues of the **Federal Register**, if appropriate, the agency will consider proposed improvements to its testing methodology.

54. One comment contended that the calculation of erythema effective exposure (E) serves no practical purpose in the calculation of SPF because the E constant is common to both the numerator and denominator of the equation. Another comment stated that the definition of E is incorrect because it is defined as ''dose'' (Joules/square meter (m^2)) on the left side of the equation $E = \Sigma V_i (\lambda) * I (\lambda)$, whereas the right side of the equation is in terms of irradiance (Watts/m^2). The comment also stated that the unit of time exposure (seconds) is missing on the right side of the equation.

The agency acknowledges that this calculation is not technically necessary if the solar simulator emission spectrum does not change between exposures to protected and unprotected skin. The same result can then be obtained by measuring the difference (i.e., ratio) in time required to produce erythema on protected versus unprotected skin. However, the agency finds that the calculation of E provides valuable information and is necessary to demonstrate how the MED was determined during SPF testing. The agency agrees with the comment concerning the missing variable of time (in seconds) in the calculation of E and, accordingly, has modified the equation in § 352.73 of this document to read as follows: '' $E = \Sigma V_i (\lambda) * I (\lambda) * t_{exp}$''

III. Recent Developments

In the **Federal Register** of October 22, 1998, the agency proposed to amend the tentative final monograph to include zinc oxide as a single ingredient and in combination with any proposed Category I sunscreen active ingredient except avobenzone. Two comments supported the proposal. One comment disagreed with the agency's exclusion of avobenzone from combinations with zinc oxide. Two of the comments urged the agency to expeditiously review and approve a citizen petition (Ref. 45) to recognize this combination.

The agency has informed the petitioner that it is unable to approve the combination without appropriate UVA radiation effectiveness data to demonstrate the UVA radiation protection potential of zinc oxide in combination with avobenzone (Ref. 46). The agency will reconsider this combination for monograph status upon receipt of the appropriate data.

This final rule includes monograph conditions for zinc oxide as a sunscreen active ingredient at concentrations up to 25 percent when used alone or in combination with any monograph sunscreen active ingredient except avobenzone.

IV. Additional Changes

1. The agency has determined that for an active ingredient to be included in an OTC drug final monograph it is necessary to have publicly available

chemical information that can be used by all manufacturers to determine that the ingredient is appropriate for use in their products. Compendial monographs include an ingredient's official name, chemical formula, and analytical chemical tests to confirm the quality and purity of the ingredient. These monographs establish public standards for the strength, quality, purity, and packaging of ingredients and drug products available in the United States.

In the **Federal Register** of June 8, 1994, FDA deleted digalloyl trioleate, ethyl 4-[bis(hydroxypropyl)] aminobenzoate, glyceryl aminobenzoate, lawsone with dihydroxyacetone, and red petrolatum from the tentative final monograph due to the lack of interest in establishing USP compendial monographs for these ingredients. Lawsone with dihydroxyacetone subsequently remained under agency consideration due to increased interest by manufacturers in establishing a compendial monograph. Of the 18 remaining sunscreen active ingredients under consideration in the tentative final monograph (58 FR 28194 at 28295, amended at 61 FR 48645 and 63 FR 56584), 16 (aminobenzoic acid, avobenzone, cinoxate, dioxybenzone, homosalate, menthyl anthranilate, octocrylene, octyl methoxycinnamate, octyl salicylate, oxybenzone, padimate O, phenylbenzimidazole sulfonic acid, sulisobenzone, titanium dioxide, trolamine salicylate, and zinc oxide) currently have compendial monographs. Two (diethanolamine methoxycinnamate and lawsone with dihydroxyacetone) do not have a current or proposed compendial monograph.

The agency is including in § 352.10 of this document the 16 sunscreen active ingredients that currently have a compendial monograph. The agency is reserving the appropriate paragraphs in proposed § 352.10 for the two active ingredients without compendial monographs in case a monograph is developed for either ingredient. Dihydroxyacetone has been proposed for a compendial monograph, but none has been proposed for lawsone. Because these two active ingredients are used in conjunction, lawsone must have a compendial monograph in order for lawsone with dihydroxyacetone to be included in the sunscreen final monograph.

2. The agency has revised proposed § 352.52(b) in response to comments requesting reduction, streamlining, and flexibility of sunscreen labeling and in accordance with new data reviewed by the agency (see section II.I of this document). The agency has revised proposed § 352.52(b)(1) by: (1) Deleting references to any other indication except that pertaining to the prevention of sunburn (see section II.I, comment 37 of this document), (2) adding (in § 352.52(b)(2) of this final rule) guidance on SPF selection due to simplification of the PCD in proposed § 352.52(e)(1) and deletion of the Recommended Product Guide in proposed § 352.52(e)(4) (see section II.L, comments 49 and 50 of this document), and (3) deleting the quantitative claims (i.e., ''up to (insert SPF of product up to 30) times'') and terms such as ''screens,'' ''shields,'' etc., concerning sunburn protection throughout proposed § 352.52(b) (see section II.I, comment 37 of this document).

3. The tentative final monograph allowed reduced labeling directions on sunscreen products if formulated as a make-up preparation, lipstick, lip balm, or skin preparation and labeled with claims relating only to the prevention of ''lip damage,'' ''freckling,'' or ''uneven coloration.'' Because there is no convincing evidence that SPF testing predicts protection from anything but sunburn (see section II.I, comment 36 of this document), the agency is not including proposed § 352.52(b)(1)(v), (b)(1)(vi), (d)(4), and (d)(5) in this document. The agency will consider including such claims in the monograph when specific supportive data are provided or a specific clinically relevant final formulation test is developed.

4. Numerous comments requested deletion of the dual SPF testing of water resistant products in proposed § 352.50(b)(2) and (c)(2). The agency agrees with the comments (see section II.H, comment 32 of this document) and has revised proposed §§ 352.50(b)(2) and (c)(2) and 352.76 to require only the SPF value after water resistant testing. Further, the agency has modified and made optional the reapplication directions in proposed §§ 352.52(d)(1) and (d)(2) (see section II.K, comment 48 of this document). These changes to proposed § 352.52(d) provide flexibility by allowing manufacturers to expand on reapplication information necessary for specific sunscreen formulations and by equalizing requirements between products with and without water resistance claims and between sunscreen drug and drug-cosmetic products. Thus, the water resistance labeling in § 352.52(b)(1)(ii) and (b)(1)(iii) of this document should also serve as a directive for reapplication of the product. In summary, for products making water and/or sweat resistance claims, the agency has modified and combined water resistance statements formerly in proposed § 352.52(e)(2), (e)(3), (d)(1), and (d)(2) into § 352.52(b)(1)(ii) and (b)(1)(iii) in this document.

5. The agency has modified references to ''tanning'' and ''prolongs exposure time'' in proposed § 352.52(b)(2) by combining the PCD claim in § 352.52(e)(1) of this document with either the phrase ''protection against sunburn'' or ''protection against sunburn and tanning.'' Based upon current information, the agency believes that the terms proposed in the tentative final monograph could send the wrong message relative to the dangers of even suberythemal UV radiation exposure and give consumers a false sense of security concerning sun exposure and sunscreen use. The agency has reduced and simplified the other optional, additional indications in proposed § 352.52(b)(2) to reflect a modified, simpler, combined version of the PCD in proposed § 352.52(e)(1) (see section II.L, comment 49 of this document) and the ''Recommended Product Guide'' in proposed § 352.52(e)(4) (see section II.L, comment 50 of this document). Because the agency has deleted reference to use of the term ''Sunblock'' in proposed section § 352.52(e)(5) (see section II.L, comment 52 of this document), it has deleted reference to ''Reflects the burning rays of the sun'' in proposed § 352.52(b)(3) for the same reasons.

6. Several comments requested labeling exemptions or flexibility for packages that are too small to accommodate all required information. Some comments specifically requested flexible labeling for products based upon their intended use, such as lipsticks and lip balms.

As discussed in the final rule establishing standardized format and content requirements for the labeling of OTC drug products (64 FR 13254 at 13267 to 13268 and 13289), the agency has established specifications for small packages in § 201.66(d)(10). The agency also stated in the final labeling rule that it will consider additional approaches for accommodating certain small-package products in their respective OTC drug monograph proceedings.

The agency considers the required OTC drug labeling information essential for the safe and effective use of these products and important to consumers for selection of an appropriate product. Nevertheless, the agency agrees that excessive labeling requirements may discourage manufacturers from marketing certain products, such as lipsticks or lip balms containing sunscreens, which provide significant public health benefit.

In this OTC drug rulemaking, the agency has included several accommodations for products such as

lipsticks (and lip balms, which will be addressed in the final monograph on OTC skin protectant drug products), taking into consideration the intended uses of these products, the limited areas to which these products are applied, and the overall safety profile of these products, and other factors described in the final OTC labeling rule (64 FR 13254 at 13270). The agency is including § 352.52(f) in this document to provide for labeling modifications for sunscreen products that meet the small package specifications in § 201.66(d)(10) and are labeled for use on specific small areas of the face (e.g., lips, nose, ears, and/or around eyes).

7. The agency has revised §§ 700.35 and 740.19 (21 CFR 700.35 and 740.19) in response to comments requesting clarification on whether certain products will be subject to regulation as drugs (see section II.B, comments 8 through 11 of this document). Section 700.35 has been revised to make clear that, generally, products that make sun protection claims, whether express or implied, are subject to regulation as drugs. Only those products that contain a sunscreen ingredient solely for a nontherapeutic, nonphysiologic use (e.g., as a color additive, or to protect the color of the product such as in a nail polish or hair coloring product) (see 58 FR at 28205), and which include a labeling statement that accurately describes that use, may be marketed as cosmetic products. Section 740.19 has been revised to make clear that the term ''suntanning preparations'' does not include products intended to provide sun protection or otherwise to affect the structure or any function of the body. Suntanning preparations include gels, creams, liquids, and other topical products that are intended to provide cosmetic effects on the skin while tanning through exposure to UV radiation (e.g., moisturizing or conditioning), or that are intended to give the appearance of a tan by imparting color through the application of approved color additives (e.g., dihydroxyacetone) without the need for exposure to UV radiation (i.e., sunless tanning products).

V. Conclusion

The agency is issuing a final monograph establishing conditions under which OTC sunscreen drug products are generally recognized as safe and effective and not misbranded; 16 ingredients listed in § 352.10 are currently a monograph condition. Any drug product labeled, represented, or promoted for use as an OTC sunscreen drug that contains any of the nonmonograph ingredients listed in § 310.545(a)(29), or that is not in conformance with the monograph (21 CFR part 352), may be considered a new drug within the meaning of section 201(p) of the act and misbranded under section 502 of the act. Such a drug product cannot be marketed for OTC sunscreen use unless it is the subject of an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations. An appropriate citizen petition to amend the monograph may also be submitted in accord with 21 CFR 10.30 and § 330.10(a)(12)(i). The agency will address sunscreen active ingredients that have foreign marketing experience and data at a future time. Any OTC sunscreen drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of the final rule for § 310.545(a)(29) or this document that is not in compliance with the regulations is subject to regulatory action.

VI. References

The following references are on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. CP1, Docket No. 78N–0038, Dockets Management Branch.
2. Comment No. CP2, Docket No. 78N–0038, Dockets Management Branch.
3. Comment No. CP3, Docket No. 78N–0038, Dockets Management Branch.
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9. Comment No. C00364, Docket No. 78N–0038, Dockets Management Branch.
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18. Lavker, R., and K. Kaidbey, ''The Spectral Dependence for UVA-Induced Cumulative Damage in Human Skin,'' *The Journal of Investigative Dermatology*, 108:17–21, 1997.
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21. Comment No. C00282, Docket No. 78N–0038, Dockets Management Branch.
22. Comment No. C00365, Docket No. 78N–0038, Dockets Management Branch.
23. Comment No. C00531, Docket No. 78N–0038, Dockets Management Branch.
24. Comment No. C00128, Docket No. 78N–0038, Dockets Management Branch.
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45. Comment No. CP8, Docket No. 78N–0038, Dockets Management Branch.

46. Comment No. LET166, Docket No. 78N–0038, Dockets Management Branch.

47. Food and Drug Administration, ''Supplement to the Economic Impact Analysis of the Sunscreen Drug Products for Over-the-Counter Human Use; Final Monograph,'' in OTC Vol. 06FR, Docket No. 78N–0038, Dockets Management Branch.

48. Eastern Research Group, Inc., ''Over-the-Counter Drug Reformulation Changes,'' in OTC Vol. 06FR, Docket No. 78N–0038, Dockets Management Branch.

VII. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the principles identified in Executive Order 12866. OMB has determined that the final rule is a significant regulatory action as defined by the Executive Order and so is subject to review. Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act requires that agencies prepare a written assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) (2 U.S.C. 1532).

Because the rule may have a significant economic impact on a substantial number of small entities, this section of the preamble constitutes the agency's Final Regulatory Flexibility Analysis. Because the rule does not impose any mandates on State, local, or tribal governments, or the private sector, that will result in an expenditure in any 1 year of $100 million or more, FDA is not required to perform a cost-benefit analysis according to the Unfunded Mandates Reform Act.

An analysis of the costs and benefits of this regulation, conducted under Executive Order 12291, was discussed in the tentative final monograph for OTC sunscreen drug products (58 FR 28194 at 28294). The agency received only one response to the specific request for data and comment on the economic impact of this rulemaking. This comment discussed the costs that would result from proposed changes in sunscreen product labeling and testing methods. The agency's review of this comment is included as follows.

A. Background

The purpose of this document is to establish conditions under which OTC sunscreen drug products are generally recognized as safe, effective, and not misbranded. The document sets specific requirements for appropriate monograph ingredients, labeling format and content, and SPF value and water resistant testing. Although the agency cannot quantify the overall expected benefits, each provision of the rule will support the ability of consumers to take desired protective actions. Monograph ingredients have been proven safe and effective assuring the quality of sunscreen products. This benefits consumers because it ensures that the product will provide ingredients that safely protect against sunburn. The new product labeling will better inform consumers about the sunburn protection provided by the products; and if manufacturers choose to include the optional ''Sun alert'' labeling statement, the product labeling can reference that the use of sunscreens may reduce the risk of skin aging, skin cancer, and other harmful effects of the sun. These labeling requirements, in conjunction with the format requirements of the OTC uniform labeling rule (64 FR 13254) will provide clearer and more concise information that will benefit consumers in at least four ways: (1) They will increase understanding regarding the selection of sunscreen drug products, (2) they will make product comparison easier, (3) they will enhance the ability to make informed decisions regarding product purchases and proper use, and (4) they will make it easier to distinguish between sunscreen drug products that contain sunscreens and suntanning products that do not. Finally, the new requirements for product testing will assure the accuracy of the SPF value on the product label. By improving the accuracy of these ratings, this requirement will provide further assurance that consumers receive adequate sunburn protection.

The rule will require all manufacturers and distributors (or their agents) to relabel their OTC sunscreen drug products to comply with the monograph language. The labeling of certain suntanning products that do not contain sunscreens will need to include the new required warning statement. In some cases, the labeling of cosmetics containing sunscreens for nontherapeutic, nonphysiologic uses (e.g., to protect hair from sun damage) will need to describe the cosmetic role of the sunscreen ingredient(s). The SPF of some OTC sunscreen drug products may need to be retested using the method described in the final monograph. In addition, only products containing the active ingredients included in this final rule will be generally recognized as safe, effective, and not misbranded. Of the 18 active ingredients under consideration in the proposed rule, 16 currently have the required USP/N.F. compendial

monographs. The USP has not received applications for the remaining two ingredients. If either of these active ingredients are not included in the USP and added to the monograph by May 21, 2001, products containing these ingredients would need to be reformulated to replace the nonmonograph ingredient with a monograph ingredient, or the product must be removed from the market.

B. Number of Products Affected

Based on data from FDA's Drug Listing System, the agency estimates that there are approximately 2,800 OTC sunscreen drug products (different formulations, not including products that differ only by color) and about 12,000 individual stockkeeping units (SKU's) (individual products, packages, and sizes). All of the SKU's will need to be relabeled, some will require new SPF testing, and those products lacking approved active ingredients will need to be reformulated to stay on the market.

In addition, certain suntanning products and certain cosmetic products containing sunscreens will have to be relabeled. As FDA's Drug Listing System does not include suntanning products, the agency used 1995 data from A. C. Nielsen, a recognized provider of market data, to estimate that approximately 550 suntanning SKU's will be affected by the labeling requirements of this rule. New labels will also be needed for cosmetic products that contain a sunscreen for a nontherapeutic use and that include the word ''sunscreen'' or similar terms in product labeling. The agency is unable to identify the number of these cosmetic products, but does not believe that there are a large number of SKU's in this category.

C. Cost to Relabel

The relabeling costs for this rule will be moderated to the extent that manufacturers coordinate labeling changes for the final sunscreen monograph with labeling changes required by the recent rule establishing uniform format and content for OTC drug product labeling (64 FR 13254). These costs are not discussed in this analysis, however, because they are already accounted for in the agency's analysis of its OTC drug product labeling rule. That is, the agency's economic analysis of that rule excluded redesign costs for all OTC drug products not marketed under current NDA's or current final monographs, explaining that the agency would attribute all redesign costs associated with future final monographs to each final monograph rule as it published. All redesign costs for this final sunscreen monograph therefore are attributed to this rule alone.

Approximately 12,000 sunscreen drug SKU's will have to be relabeled within a 2-year implementation period to comply with the labeling requirements of this final rule. In addition, approximately 550 suntanning SKU's will have to be relabeled within a 12-month implementation period. (As noted previously, FDA could not estimate the number of cosmetic products that contain a sunscreen for a nontherapeutic use and that include the word ''sunscreen'' or similar terms in product labeling. The agency believes, however, the relabeling of this group of cosmetic products will impose a minimal economic burden because some of these products already include the required labeling, and most manufacturers revise these labels for marketing considerations more frequently than the allowed 2-year phase-in period. Therefore, the agency's estimates do not include a cost for relabeling those products that contain sunscreens for a nontherapeutic, nonphysiologic use.)

Frequent labeling redesigns are a recognized cost of doing business in the OTC drug industry, particularly for drug-cosmetic and seasonal products. Thus, SKU's with labels that would normally be redesigned within the implementation periods were assumed to incur no additional costs. The cost for the remaining SKU's was calculated as the lost value of the remaining life-years of the existing label design. FDA estimates that labeling for the majority (90 percent) of the SKU's affected by this final rule are redesigned at least every 2 years. Of the remaining SKU's, the agency assumes that half would be redesigned every 3 years and half every 6 years. Because the required labeling for OTC sunscreen drug products now includes fewer words than the previous language and the final rule contains a number of labeling modifications for products used on small areas of the face (which are usually marketed in small size packages), this rule is not expected to require manufacturers to increase the package size or available labeling space. (Although costs of redesigning labels for future final monographs were excluded from FDA's analysis of its OTC drug product labeling rule, costs for increased package sizes were considered in the analysis of impacts for that regulation (64 FR 13254 at 13283)).

FDA estimated the cost of redesign by counting only the value of the label-years that would be lost, after adjusting for the length of the traditional labeling cycle. The regulatory cost was calculated as the product of the number of SKU's, the number of years of labeling life lost, and the value of each year of labeling life lost (see 64 FR 13254 at 13278 through 13284).[2]

Table 1 in section VIII.C of this document details FDA's estimates of the distribution of relabeling costs resulting from the final rule. A weighted average cost to redesign a label of $5,210 per SKU was used to calculate the relabeling cost of sunscreen drug products, whereas a weighted average cost of $6,620 per SKU was used to calculate the cost of relabeling suntanning products. A detailed description of the cost analysis is on file with the Docket Management Branch (Ref. 47). As shown, the total incremental cost to relabel the approximately 12,000 sunscreen drug SKU's is about $1.5 million, while the cost to relabel the approximately 550 suntanning SKU's was about $1.8 million. The greater per SKU cost for relabeling suntanning products reflects the shorter, 12-month, phase-in period. With a shorter phase-in period, manufacturers are less able to incorporate labeling changes into voluntary redesign cycles and, therefore, lose label inventory.

TABLE 1.—ONE-TIME COST TO RELABEL SUNSCREEN AND SUNTANNING SKU'S ($)

	Type of Product		
Size of Company	Drug	Suntanning	Total Cost
Small[1]	649,283	1,128,700	1,777,983

[2] Mathematically the following formula was used to calculate the incremental relabeling costs:

$Cost_{yx} = \Sigma j\ N_x A_x (1/x)$, where j = 1 to (x-y)

Total $Cost_y = Cost_{y6} + Cost_{y3} + Cost_{y2}$

where:

x = life of labeling in years (2, 3, or 6)

y = phase-in period in years

N_x = number of SKU's with labeling life of x years, and

A_x = amortized annual value of labeling with a life of x years.

TABLE 1.—ONE-TIME COST TO RELABEL SUNSCREEN AND SUNTANNING SKU'S ($)—Continued

Size of Company	Type of Product		
	Drug	Suntanning	Total Cost
Large	860,677	691,800	1,552,477
Total Cost	1,509,960	1,820,500	3,330,460

[1] See section VII.G of this document.

The one comment that raised economic issues in response to the tentative final monograph expressed concern about available labeling space on small packages of sunscreen drug products. The comment stated that all text needs to be concise. The agency considered this comment in developing the final rule, which contains specific labeling modifications for small packages and for sunscreen products used on small areas of the face (e.g., lips, nose, ears, and/or around the eyes).

D. Cost to Retest SPF

FDA is uncertain about the number of OTC sunscreen drug products that have not been tested using the monograph SPF test method. However, the SPF test method in this document is essentially the same as the method described in the proposed rule. If manufacturers have added new products, made formulation changes, or otherwise needed to test or retest the SPF of their products since 1993, they would probably have used the most current (i.e., the proposed) test method. Therefore, the agency estimates that from 15 to 30 percent of the sunscreen drug products will require retesting as a result of this document. The cost of the SPF test varies, depending on the product claim (water resistant or very water resistant) and SPF factor tested, and ranges from $2,500 to $6,500. On the assumption that 50 percent of the traditional sunscreen drug products, and none of the make-up type sunscreen products, make water resistant claims, and 50 percent of the products that make water resistant claims make very water resistant claims, the estimated weighted average cost of the SPF test is $3,514. FDA estimates the total cost of this requirement, therefore, to range from $3.1 million to $6.1 millions (see the following Table 2).

TABLE 2.—ONE-TIME COST TO RETEST SPF ASSUMING 15 PERCENT OR 30 PERCENT COMPLIANCE RATES ($)

Size of Company	15 Percent Non-compliance	30 Percent Non-compliance
Small	1,300,000	2,600,000
Large	1,800,000	3,500,000
Total Cost	3,100,000	6,100,000

E. Cost to Reformulate

Reformulation costs will depend on the number of products, if any, that will have no active ingredients with completed USP compendial monographs by the end of the implementation period. At the present time, only two of the active ingredients being considered do not have a USP monograph. According to the agency's drug listing system, two products, manufactured by one company contain one of these ingredients. The agency is not currently aware of other products in the marketplace that contain these two ingredients.

The cost to reformulate a product varies by the nature of the reformulation, the type of product, and the size and complexity of the company. Because OTC sunscreen drug products are well characterized topical formulations, FDA estimates the cost to reformulate at about $350,000 per product. Thus, on the assumption that the manufacturer reformulates rather than removes the products from the market, the one-time cost of reformulation for two products would be $700,000.

F. Total Incremental Costs

The estimated total one-time incremental cost of this rule, using the midpoint of the cost range for retesting and reformulation is $8.6 million (see Table 3 of this document). These estimates are based on 16 of the 18 active sunscreen ingredients under consideration having USP compendial monographs. If a USP monograph is completed for the one ingredient in these two products or if the two products are removed from the market, the cost of reformulation would be eliminated.

G. Small Business Impact

Based on the analysis of FDA's drug listing system and other data described previously, there are about 180 domestic companies that manufacture OTC sunscreen and suntanning products. Distributors were not assigned costs because manufacturers of OTC drug products are usually responsible for product labeling, testing, and formulation. Approximately 78 percent of these firms meet the Small Business Administration's definition of a small entity for this industry (less than 750 employees).

TABLE 3.—TOTAL INCREMENTAL COST TO INDUSTRY ($)

Size of Company	Relabel Products		Retest SPF[1]	Reformulation[2]	Total
	Drug	Suntanning			
Small	670,000	1,100,000	2,000,000	n/a	n/a
Large	840,000	700,000	2,600,000	n/a	n/a

TABLE 3.—TOTAL INCREMENTAL COST TO INDUSTRY ($)—Continued

Size of Company	Relabel Products		Retest SPF[1]	Reformulation[2]	Total
	Drug	Suntanning			
Total Cost	1,510,000	1,800,000	4,600,000	700,000	8,610,000

[1] Assumes 22.5 percent noncompliance (midpoint of range)
[2] Assumes 2 products would require reformulation

The rule will require manufacturers of sunscreens to relabel their products. Some firms will need to retest the SPF of these products, and one firm may have to reformulate or remove two products from the market. Because of the 2-year implementation period, most firms will be able to relabel during a normal relabeling cycle, at no additional cost. FDA cannot estimate with certainty the number of small firms that will need to retest or reformulate their OTC sunscreen products, but projects that from 15 to 30 percent of all products may need to be retested and that 2 products may need to be reformulated. Costs will vary by firm, depending on the type and number of products requiring relabeling, retesting, and reformulation. The firm-specific impact may vary inversely with the volume of product sales, however, because per unit costs will be lower for products with high volume sales. Thus, the relative economic impact of product retesting or relabeling may be greater for small firms than for large firms.

Because of the 2-year phase-in period allowed for sunscreen drug and drug-cosmetic products, which allows manufacturers the flexibility to incorporate regulatory changes with voluntary/market-driven changes, the economic impact of the relabeling requirement is relatively low (approximately $3.3 million). However, for those small companies that may have to relabel a substantial number of products, the out-of-pocket costs could be significant.

Also, the cost to a small company needing to reformulate a product, estimated at approximately $350,000 would be significant. This impact may be moderated by other options available, which may be more cost effective than reformulation. For example, a manufacturer may be able to substitute other formulations, shift production to a contract manufacturer with an approved formulation, or temporarily remove the product from the market and await the completion of a USP compendial monograph for the ingredient. Because the OTC drug industry is highly regulated, all firms are expected to have access to the necessary professional skills on staff or to make contractual arrangements to comply with the paperwork and other requirements of this rule.

H. Analysis of Alternatives

The agency altered several proposed regulatory provisions to reduce the economic burden of this rule on industry. For example, FDA decreased the amount of required labeling and provided small package accommodations for certain products. The labeling required by the proposed rule would have increased the needed label and/or package size for as many as 90 percent of the sunscreen products. Such size adjustments could have imposed estimated additional one-time relabeling costs of $18 million and annually recurring costs of $22 million (see Eastern Research Group, ''Cost Impacts of the Over-the-Counter Pharmaceutical Labeling Rule'' (Ref. 48)). Also, in response to the comment (see section II.H, comment 32 of this document), the agency has reconsidered its position on SPF testing of water resistant and very water resistant products and eliminated the static test requirement for these products. As the average cost of the static test is approximately $2,800, the estimated savings to industry due to the elimination of this test is about $750,000.

The agency also considered a number of implementation alternatives to this final rule. Generally, the agency allows only a 1-year implementation period for final monographs. However, because most sunscreen products are produced seasonally, the 2-year period will substantially enhance the ability of the industry to relabel and reformulate its products, if necessary, and sell its existing product inventories. The 2-year period will also allow sunscreen manufacturers to coordinate the required labeling changes with routine industry-initiated labeling changes and changes required by the new OTC drug product labeling final rule (64 FR 13254).

A 3-year implementation period for sunscreen drug products was considered, but the agency determined that a 2-year period provides sufficient time to allow the required relabeling and product retesting to be completed. The agency found that the savings to industry of delayed implementation (estimated to be about $845,000) were not great enough to justify delaying appropriate use and safety information to consumers of OTC sunscreen drug products.

Finally, the agency is providing a 12-month implementation period for certain suntanning preparations to add new warning information. For this category, consumers may believe that these products are providing sun protection when, in fact, they do not. They may forego using other products that have been demonstrated to be effective in providing sun protection, believing that their tanning product provides some measure of protection. Because the new warning for suntanning preparations presents an important safety issue that needs to be conveyed to consumers at the earliest possible date, the agency considered requiring a 6-month implementation period for these products. However, given the seasonal nature of these products, the agency was concerned that some manufacturers may not have sufficient time to incorporate the labeling change without disrupting their production schedules. By providing an additional 6 months to implement the change, compliance costs were reduced by $1.8 million.

VIII. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

IX. Environmental Impact

The agency has determined that under 21 CFR 25.31(c) this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 352

Labeling, Over-the-counter drugs.

21 CFR Part 700

Cosmetics, Packaging and containers.

21 CFR Part 740

Cosmetics, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 352 is added and 21 CFR parts 310, 700, and 740 are amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.545 is amended by adding paragraph (a)(29), by revising paragraph (d) introductory text, by adding and reserving paragraph (d)(30), and by adding paragraph (d)(31) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(29) *Sunscreen drug products.*

Diethanolamine methoxycinnamate
Digalloyl trioleate
Ethyl 4-[bis(hydroxypropyl)] aminobenzoate
Glyceryl aminobenzoate
Lawsone with dihydroxyacetone
Red petrolatum

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(31) of this section.

* * * * *

(30) [Reserved]

(31) May 21, 2001 for products subject to paragraph (a)(29) of this section.

3. Part 352 is added to read as follows:

PART 352—SUNSCREEN DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Subpart B—Active Ingredients

Subpart C—Labeling

Subpart D—Testing Procedures

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

Subpart A—General Provisions

§ 352.1 Scope.

(a) An over-the-counter sunscreen drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 352.3 Definitions.

As used in this part:

(a) *Minimal erythema dose (MED).* The quantity of erythema-effective energy (expressed as Joules per square meter) required to produce the first perceptible, redness reaction with clearly defined borders.

(b) *Product category designation (PCD).* A labeling designation for sunscreen drug products to aid in selecting the type of product best suited to an individual's complexion (pigmentation) and desired response to ultraviolet (UV) radiation.

(1) *Minimal sun protection product.* A sunscreen product that provides a sun protection factor (SPF) value of 2 to under 12.

(2) *Moderate sun protection product.* A sunscreen product that provides an SPF value of 12 to under 30.

(3) *High sun protection product.* A sunscreen product that provides an SPF value of 30 or above.

(c) *Sunscreen active ingredient.* An active ingredient listed in § 352.10 that absorbs, reflects, or scatters radiation in the UV range at wavelengths from 290 to 400 nanometers.

(d) *Sun protection factor (SPF) value.* The UV energy required to produce an MED on protected skin divided by the UV energy required to produce an MED on unprotected skin, which may also be defined by the following ratio: SPF value = MED (protected skin (PS))/MED (unprotected skin (US)), where MED (PS) is the minimal erythema dose for protected skin after application of 2 milligrams per square centimeter of the final formulation of the sunscreen product, and MED (US) is the minimal erythema dose for unprotected skin, i.e., skin to which no sunscreen product has been applied. In effect, the SPF value is the reciprocal of the effective transmission of the product viewed as a UV radiation filter.

Subpart B—Active Ingredients

§ 352.10 Sunscreen active ingredients.

The active ingredient of the product consists of any of the following, within the concentration specified for each ingredient, and the finished product provides a minimum SPF value of not less than 2 as measured by the testing procedures established in subpart D of this part:

(a) Aminobenzoic acid (PABA) up to 15 percent.

(b) Avobenzone up to 3 percent.

(c) Cinoxate up to 3 percent.

(d) [Reserved].

(e) Dioxybenzone up to 3 percent.

(f) Homosalate up to 15 percent.

(g) [Reserved].

(h) Menthyl anthranilate up to 5 percent.

(i) Octocrylene up to 10 percent.

(j) Octyl methoxycinnamate up to 7.5 percent.

(k) Octyl salicylate up to 5 percent.

(l) Oxybenzone up to 6 percent.

(m) Padimate O up to 8 percent.

(n) Phenylbenzimidazole sulfonic acid up to 4 percent.

(o) Sulisobenzone up to 10 percent.

(p) Titanium dioxide up to 25 percent.

(q) Trolamine salicylate up to 12 percent.

(r) Zinc oxide up to 25 percent.

§ 352.20 Permitted combinations of active ingredients.

The SPF of any combination product is measured by the testing procedures established in subpart D of this part.

(a) *Combinations of sunscreen active ingredients.* (1) Two or more sunscreen active ingredients identified in § 352.10(a), (c), (e), (f), and (h) through (r) may be combined with each other in a single product when used in the concentrations established for each ingredient in § 352.10. The concentration of each active ingredient must be sufficient to contribute a minimum SPF of not less than 2 to the finished product. The finished product must have a minimum SPF of not less than the number of sunscreen active ingredients used in the combination multiplied by 2.

(2) Two or more sunscreen active ingredients identified in § 352.10(b), (c), (e), (f), (i) through (l), (o), and (q) may be combined with each other in a single product when used in the concentrations established for each ingredient in § 352.10. The concentration of each active ingredient must be sufficient to contribute a minimum SPF of not less than 2 to the finished product. The finished product must have a minimum SPF of not less than the number of sunscreen active ingredients used in the combination multiplied by 2.

(b) [Reserved].

(c) [Reserved].

Subpart C—Labeling

§ 352.50 Principal display panel of all sunscreen drug products.

In addition to the statement of identity required in § 352.52, the following labeling statements shall be prominently placed on the principal display panel:

(a) *For products that do not satisfy the water resistant or very water resistant sunscreen product testing procedures in § 352.76.* (1) *For products with SPF values up to 30.* ''SPF (insert tested SPF value of the product up to 30).''

(2) *For products with SPF values over 30.* ''SPF 30'' (select one of the following: ''plus'' or ''+''). Any statement accompanying the marketed product that states a specific SPF value above 30 or similar language indicating a person can stay in the sun more than 30 times longer than without sunscreen will cause the product to be misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act).

(b) *For products that satisfy the water resistant sunscreen product testing procedures in § 352.76.* (1) (Select one of the following: ''Water,'' ''Water/Sweat,'' or ''Water/Perspiration'') ''Resistant.''

(2) ''SPF (insert SPF value of the product, as stated in paragraph (a)(1) or (a)(2) of this section, after it has been tested using the water resistant sunscreen product testing procedures in § 352.76).''

(c) *For products that satisfy the very water resistant sunscreen product testing procedures in § 352.76.* (1) ''Very'' (select one of the following: ''Water,'' ''Water/Sweat,'' or ''Water/Perspiration'') ''Resistant.''

(2) ''SPF (insert SPF value of the product, as stated in paragraph (a)(1) or (a)(2) of this section, after it has been tested using the very water resistant sunscreen product testing procedures in § 352.76).''

§ 352.52 Labeling of sunscreen drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a ''sunscreen.''

(b) *Indications.* The labeling of the product states, under the heading ''Uses,'' all of the phrases listed in paragraph (b)(1) of this section that are applicable to the product and may contain any of the additional phrases listed in paragraph (b)(2) of this section, as appropriate. Other truthful and nonmisleading statements, describing only the uses that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing any ingredient in § 352.10.* (i) ''[bullet][1] helps prevent sunburn [bullet] higher SPF gives more sunburn protection''.

(ii) *For products that satisfy the water resistant testing procedures identified in § 352.76.* ''[bullet] retains SPF after 40 minutes of'' (select one or more of the following: ''activity in the water,'' ''sweating,'' or ''perspiring'').

(iii) *For products that satisfy the very water resistant testing procedures identified in § 352.76.* ''[bullet] retains SPF after 80 minutes of'' (select one or more of the following: ''activity in the water,'' ''sweating,'' or ''perspiring'').

(2) *Additional indications.* In addition to the indications provided in paragraph (b)(1) of this section, the following may be used for products containing any ingredient in § 352.10:

(i) *For products that provide an SPF of 2 to under 12.* Select one or both of the following: [''[bullet]'' (select one of the following: ''provides minimal,'' ''provides minimum,'' ''minimal,'' or ''minimum'') ''protection against'' (select one of the following: ''sunburn'' or ''sunburn and tanning'')], or ''[bullet] for skin that sunburns minimally''.

(ii) *For products that provide an SPF of 12 to under 30.* Select one or both of the following: [''[bullet]'' (select one of the following: ''provides moderate'' or ''moderate'') ''protection against'' (select one of the following: ''sunburn'' or ''sunburn and tanning'')], or ''[bullet] for skin that sunburns easily''.

(iii) *For products that provide an SPF of 30 or above.* Select one or both of the following: [''[bullet]'' (select one of the following: ''provides high'' or ''high'') ''protection against'' (select one of the following: ''sunburn'' or ''sunburn and tanning'')], or ''[bullet] for skin highly sensitive to sunburn''.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading ''Warnings:''

(1) *For products containing any ingredient in § 352.10.* (i) ''When using this product [bullet] keep out of eyes. Rinse with water to remove.''

(ii) ''Stop use and ask a doctor if [bullet] rash or irritation develops and lasts''.

(2) *For products containing any ingredient identified in § 352.10 marketed as a lipstick.* The external use only warning in § 201.66(c)(5)(i) of this chapter and the warning in paragraph (c)(1)(i) of this section are not required.

(d) *Directions.* The labeling of the product contains the following statements, as appropriate, under the heading ''Directions.'' More detailed directions applicable to a particular product formulation (e.g., cream, gel, lotion, oil, spray, etc.) may also be included.

(1) *For products containing any ingredient in § 352.10.* (i) ''[bullet] apply'' (select one or more of the following, as applicable: ''liberally,'' ''generously,'' ''smoothly,'' or ''evenly'') ''(insert appropriate time interval, if a waiting period is needed) before sun exposure and as needed''.

(ii) ''[bullet] children under 6 months of age: ask a doctor''.

(2) *In addition to the directions provided in § 352.52(d)(1), the following may be used for products containing any ingredient in § 352.10.* ''[bullet] reapply as needed or after towel drying, swimming, or'' (select one of the following: ''sweating'' or ''perspiring'').

(3) *If the additional directions provided in § 352.52(d)(2) are used, the phrase ''and as needed'' in § 352.52(d)(1) is not required.*

(4) *For products marketed as a lipstick.* The directions in paragraphs (d)(1) and (d)(2) of this section are not required.

[1] See § 201.66(b)(4) of this chapter.

(e) *Statement on product performance*—(1) *For products containing any ingredient identified in § 352.10, the following PCD labeling claims may be used under the heading ''Other information'' or anywhere outside of the ''Drug Facts'' box or enclosure.*

(i) *For products containing active ingredient(s) that provide an SPF value of 2 to under 12.* (Select one of the following: ''minimal'' or ''minimum'') ''sun protection product.''

(ii) *For products containing active ingredient(s) that provide an SPF value of 12 to under 30.* ''moderate sun protection product.''

(iii) *For products containing active ingredient(s) that provide an SPF value of 30 or above.* ''high sun protection product.''

(2) *For products containing any ingredient identified in § 352.10, the following labeling statement may be used under the heading ''Other information'' or anywhere outside of the ''Drug Facts'' box or enclosure.* ''Sun alert: Limiting sun exposure, wearing protective clothing, and using sunscreens may reduce the risks of skin aging, skin cancer, and other harmful effects of the sun.'' Any variation of this statement will cause the product to be misbranded under section 502 of the act.

(f) *Products labeled for use only on specific small areas of the face (e.g., lips, nose, ears, and/or around eyes) and that meet the criteria established in § 201.66(d)(10) of this chapter.* The title, headings, subheadings, and information described in § 201.66(c) of this chapter shall be printed in accordance with the following specifications:

(1) The labeling shall meet the requirements of § 201.66(c) of this chapter except that the title, headings, and information described in § 201.66(c)(1), (c)(3), and (c)(7) may be omitted, and the headings, subheadings, and information described in § 201.66(c)(2), (c)(4), (c)(5), and (c)(6) may be presented as follows:

(i) The active ingredients (§ 201.66(c)(2) of this chapter) shall be listed in alphabetical order.

(ii) The heading and the indication required by § 201.66(c)(4) may be limited to: ''Use [in bold type] helps prevent sunburn.''

(iii) The ''external use only'' warning in § 201.66(c)(5)(i) of this chapter may be omitted.

(iv) The subheadings in § 201.66(c)(5)(iii) through (c)(5)(vii) of this chapter may be omitted, provided the information after the heading ''Warnings'' states: ''Keep out of eyes.'' and ''Stop use if skin rash occurs.''

(v) The warning in § 201.66(c)(5)(x) of this chapter may be limited to the following: ''Keep out of reach of children.''

(vi) For a lipstick, the warnings ''Keep out of eyes'' in § 352.52(f)(1)(iv) and ''Keep out of reach of children'' in § 352.52(f)(1)(v) and the directions in § 352.52(d) may be omitted.

(2) The labeling shall be printed in accordance with the requirements of § 201.66(d) of this chapter except that any requirements related to § 201.66(c)(1), (c)(3), and (c)(7), and the horizontal barlines and hairlines described in § 201.66(d)(8), may be omitted.

§ 352.60 Labeling of permitted combinations of active ingredients.

Statements of identity, indications, warnings, and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicative words or phrases so that the resulting information is clear and understandable.

(a) *Statement of identity.* For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs.

(b) *Indications.* The labeling of the product states, under the heading ''Uses,'' the indication(s) for each ingredient in the combination as established in the indications sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph. Other truthful and nonmisleading statements, describing only the indications for use that have been established in the applicable OTC drug monographs or listed in this paragraph (b), may also be used, as provided by § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) In addition, the labeling of the product may contain any of the ''other allowable statements'' that are identified in the applicable monographs.

(2) For permitted combinations containing a sunscreen and a skin protectant identified in § 352.20(b).

(c) *Warnings.* The labeling of the product states, under the heading ''Warnings,'' the warning(s) for each ingredient in the combination, as established in the warnings section of the applicable OTC drug monographs. For permitted combinations containing a sunscreen and a skin protectant identified in § 352.20(b).

(d) *Directions.* The labeling of the product states, under the heading ''Directions,'' directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph. When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not contain any dosage that exceeds those established for any individual ingredient in the applicable OTC drug monograph(s), and may not provide for use by any age group lower than the highest minimum age limit established for any individual ingredient. For permitted combinations containing a sunscreen and a skin protectant identified in § 352.20(b).

Subpart D—Testing Procedures

§ 352.70 Standard sunscreen.

(a) *Laboratory validation.* A standard sunscreen shall be used concomitantly in the testing procedures for determining the SPF value of a sunscreen drug product to ensure the uniform evaluation of sunscreen drug products. The standard sunscreen shall be an 8-percent homosalate preparation with a mean SPF value of 4.47 (standard deviation = 1.279). In order for the SPF determination of a test product to be considered valid, the SPF of the standard sunscreen must fall within the standard deviation range of the expected SPF (i.e., 4.47 ± 1.279) and the 95-percent confidence interval for the mean SPF must contain the value 4.

(b) *Preparation of the standard homosalate sunscreen.* (1) The standard homosalate sunscreen is prepared from two different preparations (preparation A and preparation B) with the following compositions:

COMPOSITION OF PREPARATION A AND PREPARATION B OF THE STANDARD SUNSCREEN

Ingredients	Percent by weight
Preparation A	
Lanolin	5.00
Homosalate	8.00
White petrolatum	2.50
Stearic acid	4.00
Propylparaben	0.05
Preparation B	
Methylparaben	0.10
Edetate disodium	0.05
Propylene glycol	5.00
Triethanolamine	1.00
Purified water U.S.P	74.30

(2) Preparation A and preparation B are heated separately to 77 to 82 °C, with constant stirring, until the contents of each part are solubilized. Add preparation A slowly to preparation B while stirring. Continue stirring until the emulsion formed is cooled to room temperature (15 to 30 °C). Add sufficient purified water to obtain 100 grams of standard sunscreen preparation.

(c) *Assay of the standard homosalate sunscreen*. Assay the standard homosalate sunscreen preparation by the following method to ensure proper concentration:

(1) *Preparation of the assay solvent*. The solvent consists of 1 percent glacial acetic acid (V/V) in denatured ethanol. The denatured ethanol should not contain a UV radiation absorbing denaturant.

(2) *Preparation of a 1-percent solution of the standard homosalate sunscreen preparation*. Accurately weigh 1 gram of the standard homosalate sunscreen preparation into a 100-milliliter volumetric flask. Add 50 milliliters of the assay solvent. Heat on a steam bath and mix well. Cool the solution to room temperature (15 to 30 °C). Then dilute the solution to volume with the assay solvent and mix well to make a 1-percent solution.

(3) *Preparation of the test solution (1:50 dilution of the 1-percent solution)*. Filter a portion of the 1-percent solution through number 1 filter paper. Discard the first 10 to 15 milliliters of the filtrate. Collect the next 20 milliliters of the filtrate (second collection). Add 1 milliliter of the second collection of the filtrate to a 50-milliliter volumetric flask. Dilute this solution to volume with assay solvent and mix well. This is the test solution (1:50 dilution of the 1-percent solution).

(4) *Spectrophotometric determination*. The absorbance of the test solution is measured in a suitable double beam spectrophotometer with the assay solvent and reference beam at a wavelength near 306 nanometers.

(5) *Calculation of the concentration of homosalate*. The concentration of homosalate is determined by the following formula which takes into consideration the absorbance of the sample of the test solution, the dilution of the 1-percent solution (1:50), the weight of the sample of the standard homosalate sunscreen preparation (1 gram), and the standard absorbance value (172) of homosalate as determined by averaging the absorbance of a large number of batches of raw homosalate:

Concentration of homosalate = absorbance x 50 x 100 x 172 = percent concentration by weight.

§ 352.71 Light source (solar simulator).

A solar simulator used for determining the SPF of a sunscreen drug product should be filtered so that it provides a continuous emission spectrum from 290 to 400 nanometers similar to sunlight at sea level from the sun at a zenith angle of 10 °; it has less than 1 percent of its total energy output contributed by nonsolar wavelengths shorter than 290 nanometers; and it has not more than 5 percent of its total energy output contributed by wavelengths longer than 400 nanometers. In addition, a solar simulator should have no significant time-related fluctuations in radiation emissions after an appropriate warmup time, and it should have good beam uniformity (within 10 percent) in the exposure plane. To ensure that the solar simulator delivers the appropriate spectrum of UV radiation, it must be measured periodically with an accurately-calibrated spectroradiometer system or equivalent instrument.

§ 352.72 General testing procedures.

(a) *Selection of test subjects (male and female)*. (1) Only fair-skin subjects with skin types I, II, and III using the following guidelines shall be selected:

Selection of Fair-skin Subjects

Skin Type and Sunburn and Tanning History (Based on first 30 to 45 minutes sun exposure after a winter season of no sun exposure.)

I—Always burns easily; never tans (sensitive).
II—Always burns easily; tans minimally (sensitive).
III—Burns moderately; tans gradually (light brown) (normal).
IV—Burns minimally; always tans well (moderate brown) (normal).
V—Rarely burns; tans profusely (dark brown) (insensitive).
VI—Never burns; deeply pigmented (insensitive).

(2) A medical history shall be obtained from all subjects with emphasis on the effects of sunlight on their skin. Ascertain the general health of the individual, the individual's skin type (I, II, or III), whether the individual is taking medication (topical or systemic) that is known to produce abnormal sunlight responses, and whether the individual is subject to any abnormal responses to sunlight, such as a phototoxic or photoallergic response.

(b) *Test site inspection*. The physical examination shall determine the presence of sunburn, suntan, scars, active dermal lesions, and uneven skin tones on the areas of the back to be tested. The presence of nevi, blemishes, or moles will be acceptable if in the physician's judgment they will not interfere with the study results. Excess hair on the back is acceptable if the hair is clipped or shaved.

(c) *Informed consent*. Legally effective written informed consent must be obtained from all individuals.

(d) *Test site delineation*—(1) *Test site area*. A test site area serves as an area for determining the subject's MED after application of either the sunscreen standard or the test sunscreen product, or for determining the subject's MED when the skin is unprotected (control site). The area to be tested shall be the back between the beltline and the shoulder blade (scapulae) and lateral to the midline. Each test site area for applying a product or the standard

sunscreen shall be a minimum of 50-square centimeters, e.g., 5 x 10 centimeters. The test site areas are outlined with ink. If the person is to be tested in an upright position, the lines shall be drawn on the skin with the subject upright. If the subject is to be tested while prone, the markings shall be made with the subject prone.

(2) *Test subsite area*. Each test site area shall be divided into at least three test subsite areas that are at least 1 square centimeter. Usually four or five subsites are employed. Each test subsite within a test site area is subjected to a specified dosage of UV radiation, in a series of UV radiation exposures, in which the test site area is exposed for the determination of the MED.

(e) *Application of test materials*. To ensure standardized reporting and to define a product's SPF value, the application of the product shall be expressed on a weight basis per unit area which establishes a standard film. Both the test sunscreen product and the standard sunscreen application shall be 2 milligrams per square centimeter. For oils and most lotions, the viscosity is such that the material can be applied with a volumetric syringe. For creams, heavy gels, and butters, the product shall be warmed slightly so that it can be applied volumetrically. On heating, care shall be taken not to alter the product's physical characteristics, especially separation of the formulations. Pastes and ointments shall be weighed, then applied by spreading on the test site area. A product shall be spread by using a finger cot. If two or more sunscreen drug products are being evaluated at the same time, the test products and the standard sunscreen, as specified in § 352.70, should be applied in a blinded, randomized manner. If only one sunscreen drug product is being tested, the testing subsites should be exposed to the varying doses of UV radiation in a randomized manner.

(f) *Waiting period*. Before exposing the test site areas after applying a product, a waiting period of at least 15 minutes is required.

(g) *Number of subjects*. A test panel shall consist of not more than 25 subjects with the number fixed in advance by the investigator. From this panel, at least 20 subjects must produce valid data for analysis.

(h) *Response criteria*. In order that the person who evaluates the MED responses does not know which sunscreen formulation was applied to which site or what doses of UV radiation were administered, he/she must not be the same person who applied the sunscreen drug product to the test site or administered the doses of UV radiation. After UV radiation exposure from the solar simulator is completed, all immediate responses shall be recorded. These include several types of typical responses such as the following: An immediate darkening or tanning, typically greyish or purplish in color, fading in 30 to 60 minutes, and attributed to photo-oxidation of existing melanin granules; immediate reddening, fading rapidly, and viewed as a normal response of capillaries and venules to heat, visible and infrared radiation; and an immediate generalized heat response, resembling prickly heat rash, fading in 30 to 60 minutes, and apparently caused by heat and moisture generally irritating to the skin's surface. After the immediate responses are noted, each subject shall shield the exposed area from further UV radiation for the remainder of the test day. The MED is determined 22 to 24 hours after exposure. The erythema responses of the test subject should be evaluated under the following conditions: The source of illumination should be either a tungsten light bulb or a warm white fluorescent light bulb that provides a level of illumination at the test site within the range of 450 to 550 lux, and the test subject should be in the same position used when the test site was irradiated. Testing depends upon determining the smallest dose of energy that produces redness reaching the borders of the exposure site at 22 to 24 hours postexposure for each series of exposures. To determine the MED, somewhat more intense erythemas must also be produced. The goal is to have some exposures that produce absolutely no effect, and of those exposures that produce an effect, the maximal exposure should be no more than twice the total energy of the minimal exposure.

(i) *Rejection of test data*. Test data shall be rejected if the exposure series fails to elicit an MED response on either the treated or unprotected skin sites, or if the responses on the treated sites are randomly absent (which indicates the product was not spread evenly), or if the subject was noncompliant (e.g., subject withdraws from the test due to illness or work conflicts, subject does not shield the exposed testing sites from further UV radiation until the MED is read, etc.).

§ 352.73 Determination of SPF value.

(a)(1) The following erythema action spectrum shall be used to calculate the erythema effective exposure of a solar simulator:

$V_i(\lambda) = 1.0$ ($250 < \lambda < 298$ nm)

$V_i(\lambda) = 1.0^{0.094\,(298 - \lambda)}$ ($298 < \lambda < 328$ nanometers)

$V_i(\lambda) = 1.0^{0.015\,(139 - \lambda)}$ ($328 < \lambda < 400$ nanometers)

(2) The data contained in this action spectrum are to be used as spectral weighting factors to calculate the erythema effective exposure of a solar simulator as follows:

BILLING CODE 4160–01–F

$$E = \sum_{250}^{400} V_i(\lambda) * I(\lambda) * t_{exp}$$

where: E = Erythema Effective Exposure (dose: Joules per square meter)

V_i = Weighting Factor (Erythema Action Spectrum)

I = Spectral Irradiance (Watts per square meter per nanometer)

t_{exp} = exposure time (seconds)

BILLING CODE 4160–01–C

(b) *Determination of MED of the unprotected skin.* A series of UV radiation exposures expressed as Joules per square meter (adjusted to the erythema action spectrum calculated according to § 352.73(a)) is administered to the subsite areas on each subject with an accurately calibrated solar simulator. A series of five exposures shall be administered to the untreated, unprotected skin to determine the subject's inherent MED. The doses selected shall be a geometric series represented by (1.25^n), wherein each exposure time interval is 25 percent greater than the previous time to maintain the same relative uncertainty (expressed as a constant percentage), independent of the subject's sensitivity to UV radiation, regardless of whether the subject has a high or low MED. Usually, the MED of a person's unprotected skin is determined the day prior to testing a product. This MED(US) shall be used in the determination of the series of UV radiation exposures to be administered to the protected site in subsequent testing. The MED(US) should be determined again on the same day as the standard and test sunscreens and this MED(US) should be used in calculating the SPF.

(c) *Determination of individual SPF values.* A series of UV radiation exposures expressed as Joules per square meter (adjusted to the erythema action spectrum calculated according to § 352.73(a)) is administered to the subsite areas on each subject with an accurately-calibrated solar simulator. A series of seven exposures shall be administered to the protected test sites to determine the MED of the protected skin (MED(PS)). The doses selected shall consist of a geometric series of five exposures, where the middle exposure is placed to yield the expected SPF plus two other exposures placed symmetrically around the middle exposure. The exact series of exposures to be given to the protected skin shall be determined by the previously established MED(US) and the expected SPF of the test sunscreen. For products with an expected SPF less than 8, the exposures shall be the MED(US) times 0.64X, 0.80X, 0.90X, 1.00X, 1.10X, 1.25X, and 1.56X, where X equals the expected SPF of the test product. For products with an expected SPF between 8 and 15, the exposures shall be the MED(US) times 0.69X, 0.83X, 0.91X, 1.00X, 1.09X, 1.20X, and 1.44X, where X equals the expected SPF of the test product. For products with an expected SPF greater that 15, the exposures shall be the MED(US) times 0.76X, 0.87X, 0.93X, 1.00X, 1.07X, 1.15X, and 1.32X, where X equals the expected SPF of the test product. The MED is the quantity of erythema-effective energy required to produce the first perceptible, unambiguous redness reaction with clearly defined borders at 22 to 24 hours postexposure. The SPF value of the test sunscreen is then calculated from the dose of UV radiation required to produce the MED of the protected skin and from the dose of UV radiation required to produce the MED of the unprotected skin (control site) as follows:

SPF value = the ratio of erythema effective exposure (Joules per square meter) (MED(PS)) to the erythema effective exposure (Joules per square meter) (MED(US)).

(d) *Determination of the test product's SPF value and PCD.* Use data from at least 20 test subjects with n representing the number of subjects used. First, for each subject, compute the SPF value as stated in § 352.73(b) and (c). Second, compute the mean SPF value, $\bar{x}$, and the standard deviation, s, for these subjects. Third, obtain the upper 5-percent point from the t distribution table with n-1 degrees of freedom. Denote this value by t. Fourth, compute $ts/\sqrt{n}$. Denote this quantity by A (i.e., $A = ts/\sqrt{n}$). Fifth, calculate the SPF value to be used in labeling as follows: the label SPF equals the largest whole number less than $\bar{x}$ - A. Sixth and last, the drug product is classified into a PCD as follows: if $30 + A < \bar{x}$, the PCD is High; if $12 + A < \bar{x} < 30 + A$, the PCD is Moderate; if $2 + A < \bar{x} < 12 + A$, the PCD is Minimal; if $\bar{x} < 2 + A$, the product shall not be labeled as a sunscreen drug product and shall not display an SPF value.

§ 352.76 Determination if a product is water resistant or very water resistant.

The general testing procedures in § 352.72 shall be used as part of the following tests, except where modified in this section. An indoor fresh water

pool, whirlpool, and/or jacuzzi maintained at 23 to 32 °C shall be used in these testing procedures. Fresh water is clean drinking water that meets the standards in 40 CFR part 141. The pool and air temperature and the relative humidity shall be recorded.

(a) *Procedure for testing the water resistance of a sunscreen product.* For sunscreen products making the claim of ''water resistant,'' the label SPF shall be the label SPF value determined after 40 minutes of water immersion using the following procedure for the water resistance test:

(1) Apply sunscreen product (followed by the waiting period after application of the sunscreen product indicated on the product labeling).

(2) 20 minutes moderate activity in water.

(3) 20-minute rest period (do not towel test sites).

(4) 20 minutes moderate activity in water.

(5) Conclude water test (air dry test sites without toweling).

(6) Begin solar simulator exposure to test site areas as described in § 352.73.

(b) *Procedure for testing a very water resistant sunscreen product.* For sunscreen products making the claim of ''very water resistant,'' the label SPF shall be the label SPF value determined after 80 minutes of water immersion using the following procedure for the very water resistant test:

(1) Apply sunscreen product (followed by the waiting period after application of the sunscreen product indicated on the product labeling).

(2) 20 minutes moderate activity in water.

(3) 20-minute rest period (do not towel test sites).

(4) 20 minutes moderate activity in water.

(5) 20-minute rest period (do not towel test sites).

(6) 20 minutes moderate activity in water.

(7) 20-minute rest period (do not towel test sites).

(8) 20 minutes moderate activity in water.

(9) Conclude water test (air dry test sites without toweling).

(10) Begin solar simulator exposure to test site areas as described in § 352.73.

§ 352.77 Test modifications.

The formulation or mode of administration of certain products may require modification of the testing procedures in this subpart. In addition, alternative methods (including automated or in vitro procedures) employing the same basic procedures as those described in this subpart may be used. Any proposed modification or alternative procedure shall be submitted as a petition in accord with § 10.30 of this chapter. The petition should contain data to support the modification or data demonstrating that an alternative procedure provides results of equivalent accuracy. All information submitted will be subject to the disclosure rules in part 20 of this chapter.

PART 700—GENERAL

4. The authority citation for 21 CFR part 700 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 355, 361, 362, 371, 374.

5. Section 700.35 is added to subpart B to read as follows:

§ 700.35 Cosmetics containing sunscreen ingredients.

(a) A product that includes the term ''sunscreen'' in its labeling or in any other way represents or suggests that it is intended to prevent, cure, treat, or mitigate disease or to affect a structure or function of the body comes within the definition of a drug in section 201(g)(1) of the act. Sunscreen active ingredients affect the structure or function of the body by absorbing, reflecting, or scattering the harmful, burning rays of the sun, thereby altering the normal physiological response to solar radiation. These ingredients also help to prevent diseases such as sunburn and may reduce the chance of premature skin aging, skin cancer, and other harmful effects due to the sun when used in conjunction with limiting sun exposure and wearing protective clothing. When consumers see the term ''sunscreen'' or similar sun protection terminology in the labeling of a product, they expect the product to protect them in some way from the harmful effects of the sun, irrespective of other labeling statements. Consequently, the use of the term ''sunscreen'' or similar sun protection terminology in a product's labeling generally causes the product to be subject to regulation as a drug. However, sunscreen ingredients may also be used in some products for nontherapeutic, nonphysiologic uses (e.g., as a color additive or to protect the color of the product). To avoid consumer misunderstanding, if a cosmetic product contains a sunscreen ingredient and uses the term ''sunscreen'' or similar sun protection terminology anywhere in its labeling, the term must be qualified by describing the cosmetic benefit provided by the sunscreen ingredient.

(b) The qualifying information required under paragraph (a) of this section shall appear prominently and conspicuously at least once in the labeling in conjunction with the term ''sunscreen'' or other similar sun protection terminology used in the labeling. For example: ''Contains a sunscreen—to protect product color.''

PART 740—COSMETIC PRODUCT WARNING STATEMENTS

6. The authority citation for 21 CFR part 740 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 355, 361, 362, 371, 374.

7. Section 740.19 is added to subpart B to read as follows:

§ 740.19 Suntanning preparations.

The labeling of suntanning preparations that do not contain a sunscreen ingredient must display the following warning: ''Warning—This product does not contain a sunscreen and does not protect against sunburn. Repeated exposure of unprotected skin while tanning may increase the risk of skin aging, skin cancer, and other harmful effects to the skin even if you do not burn.'' For purposes of this section, the term ''suntanning preparations'' includes gels, creams, liquids, and other topical products that are intended to provide cosmetic effects on the skin while tanning through exposure to UV radiation (e.g., moisturizing or conditioning products), or to give the appearance of a tan by imparting color to the skin through the application of approved color additives (e.g., dihydroxyacetone) without the need for exposure to UV radiation. The term ''suntanning preparations'' does not include products intended to provide sun protection or otherwise intended to affect the structure or any function of the body.

Dated: April 22, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–12853 Filed 5–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

OSD Privacy Program; Correction

AGENCY: Department of Defense.

ACTION: Final rule; correction.

SUMMARY: This rules makes administrative corrections to the OSD Privacy Program rule published on April 28, 1999.

DATES: This rule is effective February 4, 1999.

FOR FURTHER INFORMATION CONTACT: David Bosworth, 703–588–0159.

SUPPLEMENTARY INFORMATION: On April 28, 1999 (64 FR 22784), the Department of Defense published a final rule revising 32 CFR part 311 ''OSD Privacy Program'' which contained two § 311.6(c)(1). This correction designates the second § 311.6(c)(1) as § 311.6(c)(2).

Accordingly, 32 CFR Part 311 is corrected as follows:

1. The authority citation for 32 CFR Part 311 continues to read as follows:

§ 311.6 [corrected]

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 552a).

2. Section 311.6 is corrected by redesignating the second paragraph (c)(1) as paragraph (c)(2).

Dated: May 13, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–12533 Filed 5–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–99–054]

RIN 2115–AE46

Special Local Regulation: Harvard-Yale Regatta, Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice puts into effect the permanent regulations for the annual Harvard-Yale Regatta, a rowing competition held on the Thames River in New London, CT. The regulation is necessary to control vessel traffic within the immediate vicinity of the event because of the confined nature of the waterway and anticipated congestion at the time of the event. It provides for the safety of life and property on the affected navigable waters.

EFFECTIVE DATE: The regulations in 33 CFR 100.101 are effective on June 5, 1999, from 3:00 p.m. to 8:00 p.m. If the regatta is canceled because of weather, this section will be in effect on the following day, Sunday June 6, 1999, during the same hours.

FOR FURTHER INFORMATION CONTACT: Petty Officer William M. Anderson, Office of Search and Rescue, First Coast Guard District, (617) 223–8460.

SUPPLEMENTARY INFORMATION: This notice implements the permanent special local regulation governing the 1999 Harvard-Yale Regatta. A portion of the Thames River in New London, Connecticut, will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area of the river between the Penn-Central drawbridge and Bartlett's Cove. Additional public notification will be made by the First Coast Guard District Local Notice to Mariners and marine-safety broadcasts. The full text of this regulation appears in 33 CFR 100.101.

Dated: May 5, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–12825 Filed 5–20–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–98–055]

RIN 2115–AE47

Drawbridge Operation Regulations; River Rouge (Short-Cut Canal), Michigan

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule, confirmation of effective date.

SUMMARY: On February 25, 1999, the Coast Guard published a direct final rule (64 FR 9271, CGD09–98–055) in the **Federal Register**. This direct final rule notified the public of the Coast Guard's intent to remove the operating regulations governing the Fort Street and Jefferson Street bridges, miles 1.1 and 2.2, respectively, over River Rouge in Detroit, MI, because changing vehicular traffic patterns and the needs of navigation on the river. The Coast Guard has not received any adverse comments or any notice of intent to submit adverse comments objecting to this rule as written; therefore, this rule will go into effect as scheduled.

DATES: The effective date of the direct final rule is confirmed as May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Ninth Coast Guard District (obr). at (216) 902–6084.

Dated: April 30, 1999.

J.F. McGowan,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 99–12826 Filed 5–20–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–032]

Drawbridge Operating Regulation; Lake Pontchartrain, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.5 governing the operation of the Norfolk Southern Railroad bascule drawbridge across Lake Pontchartrain, near Slidell, St. Tammany Parish, Louisiana. This deviation allows the Norfolk Southern Corporation to maintain the bridge in the closed-to-navigation position from 8 a.m. until noon and from 1 p.m. until 5 p.m., Monday through Friday from Monday, June 7, 1999, until Friday, June 18, 1999. At all other times, the bridge will operate normally for the passage of vessels. This temporary deviation is issued to allow for the replacement of railroad ties at the draw span.

DATES: This deviation is effective from 8 a.m. on Monday, June 7, 1999, until 5 p.m. on Friday, June 18, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Corporation drawbridge across Lake Pontchartrain, near Slidell, St. Tammany Parish, Louisiana, has a vertical clearance of 2 feet above high water in the closed-to-navigation position. Navigation on the water way consists of tugs with tows, fishing vessels, sailing vessels, and other recreational craft. The Norfolk Southern Corporation requested a temporary deviation from the normal operation of the bridge in order to accommodate the replacement of railroad ties at the draw span.

This deviation allows the draw of the Norfolk Southern Corporation bridge across Lake Pontchartrain, near Slidell to remain in the closed-to-navigation

position from 8 a.m. until noon, and from 1 p.m. until 5 p.m., Monday through Friday, from Monday, June 7, 1999, until Friday, June 18, 1999. Presently, the draw opens on signal for the passage of vessels.

Dated: May 11, 1999.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 99–12824 Filed 5–20–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–99–053]

RIN 2115–AA97

Safety Zone: Chelsea Street Bridge Fender System Repair, Chelsea River, Chelsea, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for repairs to the fender system of the Chelsea Street Bridge on the Chelsea River. The safety zone temporarily closes all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the Chelsea Street Bridge. The safety zone is needed to protect vessels from the hazards posed during repairs to the system.

DATES: This rule is effective between 9 p.m. and 5 a.m., Monday through Friday, from May 10, 1999, through July 31, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Marine Safety Office, Boston, 455 Commercial Street, Boston, Massachusetts, 02109, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–3000.

FOR FURTHER INFORMATION CONTACT: LT Dennis O'Mara, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, no notice of proposed rulemaking (NPRM) was published for this temporary final rule, and good cause exists for making it effective in less than 30 days after publication in the Federal Register. Details for the repairs to the fender system of the bridge were not provided to the Coast Guard until May 3, 1999, making it possible to publish a NPRM or a final rule 30 days in advance. Any delay encountered in the effective date of this rule would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with bridge construction upon a navigable waterway.

Background and Purpose

The fender system of the Chelsea Street Bridge over the Chelsea River, Chelsea, MA, needs repairs. During the repairs, barges will be moored in the center of the channel under the bridge, and pilings will be removed, replaced, or both. The placement of the barge will require the closure of the waterway for the safety of vessels during the repairs to the system. Therefore, a safety zone is necessary to allow the safe removal of pilings and repairs to the fender system, and to protect vessel traffic.

This temporary final rule establishes a safety zone in all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the Chelsea Street Bridge. This safety zone prevents entry into or movement within this portion of the Chelsea River. The expected duration of the safety zone will be between 9 p.m. and 5 a.m., Monday through Friday, from May 10, 1999, through July 31, 1999. The Coast Guard will make marine Safety Information Broadcasts informing mariners of this safety zone.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects its economic impact to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited recreational and commercial traffic expected in the area, and the fact that commercial operators have received advance notice of the project and can make alternative arrangements.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this temporary final rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This temporary final rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this temporary final rule and concluded that, under Figure 2–1, paragraph 34(g), of Commandment Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicted under **ADDRESSES.**

List of Subjects in 33 CFR part 165

Harbors, Marine safety, Navigation (water), Reporting recordkeeping requirements, Security measures, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–053 to read as follows:

§ 165.T01–053 Safety Zone: Repair to fender system of Chelsea Street Bridge, Chelsea River, Chelsea, MA.

(a) *Location.* The following area is a safety zone: All waters of the Chelsea river 100 yards upstream and 100 yards downstream from the centerline of the Chelsea Street Bridge.

(b) *Effective Date.* This section is effective between 9 p.m. and 5 a.m., Monday through Friday, from May 10, 1999, through july 31, 1999.

(c) *Regulations.* (1) Entry into or movement within this zone is prohibited unless authorized by the COTP Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene patrol personnel of the U.S. Coast Guard. Among those personnel are commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: May 6, 1999.

M.A. Skordinski,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Boston, Massachusetts.

[FR Doc. 99–12827 Filed 5–20–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–047]

RIN 2115–AA97

Safety Zone: Fire Island Tourist Bureau Fireworks Display, Great South Bay, Cherry Grove, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Fire Island Tourist Bureau fireworks display to be held at Great South Bay, Cherry Grove, N.Y., on June 26, 1999. This zone is needed to protect persons, facilities, vessels, and others in the maritime community from the hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation is effective on June 26, 1999, from 9:30 p.m. until 10:30 p.m. In case of inclement weather, June 27, 1999, is the alternative date for this event.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. The fax number is (203) 468–4445.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.J. Walker, Chief of Port Operations, Captain of the Port, Long Island Sound, at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this rule effective in less than 30 days after publication in the **Federal Register**. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The Fire Island Tourist Bureau is sponsoring a 10-minute fireworks display at Great South Bay, Cherry Grove, New York. The fireworks display will occur on June 26, 1999, from 10:00 p.m. until 10:10 p.m. The safety zone covers all waters of Great South Bay within a 600-foot radius of the fireworks-launching site, which will be located in approximate position 40°39′.45 N, 073°0′.23 W (NAD 1983). This zone is necessary to protect the maritime community from the hazards associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involved only a portion of West Harbor, and entry into this zone will be restricted for only 60 minutes, on June 26, 1999. Although this regulation prevents traffic from transiting West Harbor, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether temporary final rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed under the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this rule and you have questions concerning its provisions or options for compliance, please call LCDR T.J. Walker, telephone (203) 468–4444.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture, and 10 Regional Fairness Boards, were established to receive comments form small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this temporary final rule will result in an annual expenditure by State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that, from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No State, local, or tribal government will be affected by this rule, so the rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this temporary final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under address.

Other Executive Orders of the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following in developing this temporary final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking implications under this order. E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule will not impose, on any State, local or tribal government, a mandate that is not required by statute and that is not funded by the Federal government. E.O. 12988, Civil Justice Reform. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden. E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–CGD1–047 to read as follows:

§ 165.T01–CGD1–047 Fire Island Tourist Bureau Fireworks Display, Great South Bay, Cherry Grove, NY.

(a) *Location.* The safety zone comprises all waters of Great South Bay within a 600-foot radius of the launch site located in approximate position 40°39′.45 N, 073°.05′.23 W (NAD 1983).

Effective date. This section is effective on June 26, 1999, from 9:30 p.m. until 10:30 p.m.

(c)(1) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Among these personnel are commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

P.K. Mitchell,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 99–12953 Filed 5–20–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–039]

RIN 2115–AA97

Safety Zone: Groton Long Point Yacht Club Fireworks Display, Main Beach, Groton Long Point, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Groton Long Point Yacht Club Fireworks Display to be held in Long Island Sound, 600 feet south of the main beach in Groton Long Point, CT, on July 17, 1999. This action is needed to protect persons, facilities, vessels, and others in the maritime community from the hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation is effective on July 17, 1999, from 9 p.m. until 10:05 p.m. In case of inclement weather, July 18, 1999, is the alternative date for this event.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be faxed to this address. The fax number is (203) 468–4445.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.J. Walker, Chief of Port Operations, Captain of the Port, Long Island Sound, at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking (NPRM) and for making this rule effective in less than 30 days after publication in the **Federal Register**. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The Groton Long Point Yacht Club, of Groton Long Point, CT, is sponsoring a 20-minute fireworks display off the main beach in Groton Long Point, CT. The fireworks display will occur on July 17, 1999, from 9:30 p.m. until 9:50 p.m. The safety zone covers all waters of Long Island Sound within a 600-foot radius of the fireworks-launching barge, which will be located off of the main beach in Groton Long Point, CT, in approximate position 41°–18.5′ N, 072°–02.18′ W (NAD 1983). This zone is necessary to protect the maritime community from the hazards associated with the fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of Long Island Sound, and entry into this zone will be restricted for only 65 minutes, on July 17, 1999. Although this regulation prevents traffic from transiting this section of Long Island Sound, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed under the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this rule and you have questions concerning its provisions or options for compliance, please call LCDR T.J. Walker, telephone (203) 468–4444.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture, and 10 Regional Fairness Boards, were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary final rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this temporary final rule will result in an annual expenditure by State, local, and tribal governments, in aggregate, of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that, from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No State, local, or tribal government will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this temporary final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under Addresses.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this temporary final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.P. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–CGD1–039 to read as follows:

§ 165.T01–CGD1–039 Groton Long Point Yacht Club Fireworks Display, Main Beach, Groton Long Point, CT

(a) *Location.* The safety zone includes all waters of Long Island sound within a 600-foot radius of the launch site located in Long Island Sound 600 feet south of Main Beach, Groton Long Point, CT. in approximate position 41°–18′.05 N, 072°–02′ .08 W (NAD 1983).

(b) *Effective date.* This section is effective on July 17, 1999, from 9:00 p.m. until 10:05 p.m. In case of inclement weather, July 18, 1999, is the alternative date for this event.

(c)(1) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Among these personnel are commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

P.K. Mitchell,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 99–12954 Filed 5–20–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–9915; FRL–6335–9]

Approval and Promulgation of Air Quality Implementation Plans; Georgia; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by the State of Georgia that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by the State agency and approved by EPA.

This format revision will affect the ''Identification of plan'' sections of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC, and the Regional Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or state-submitted materials not subject to IBR review remain unchanged.

EFFECTIVE DATE: This action is effective May 21, 1999.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303;

Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, SW, Room M1500, Washington, DC 20460; and

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Scott Martin at the above Region 4 address or at 404–562–9036.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

What Is a SIP?

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms.

How EPA Enforces SIPs

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the SIP to EPA.

Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the federally approved SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), Title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52, but is ''incorporated by reference.'' This means that EPA has approved a given state regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements the SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

How the State and EPA Update the SIP

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and OFR.

EPA began the process of developing—

1. a revised SIP document for each state that would be incorporated by reference under the provisions of 1 CFR part 51;

2. a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and

3. a revised format of the ''Identification of plan'' sections for each applicable subpart to reflect these revised IBR procedures.

The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document.

How EPA Compiles the SIPs

The federally-approved regulations and source specific permits (entirely or portions of), submitted by each state agency have been compiled by EPA into a ''SIP Compilation.'' The SIP Compilation contains the updated regulations and source specific permits approved by EPA through previous rule making actions in the **Federal Register**. The compilations are contained in 3-ring binders and will be updated, primarily on an annual basis.

How EPA Organizes the SIP Compilation

Each SIP Compilation contains two parts. Part 1 contains the regulations and part 2 contains the source specific requirements that have been approved as part of the SIP. Each part has a table of contents identifying each regulation or each source specific permit. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for each state. The Regional EPA Offices have the primary responsibility for ensuring accuracy and updating the compilations.

Where You Can Find a Copy of the SIP Compilation

The Region 4 EPA Office developed and will maintain the compilation for the State of Georgia. A copy of the full text of each state's current compilation will also be maintained at the Office of Federal Register and EPA's Air Docket and Information Center.

The Format of the New Identification of Plan Section

In order to better serve the public, EPA revised the organization of the ''Identification of plan'' section and included additional information to clarify the enforceable elements of the SIP.

The revised Identification of plan section contains five subsections:

(a) Purpose and scope.

(b) Incorporation by reference.

(c) EPA approved regulations.

(d) EPA approved source specific permits.

(e) EPA approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to paragraphs (c), (d), or (e) of the applicable identification of plan found in each subpart of 40 CFR part 52.

The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA retains the original Identification of plan section, previously appearing in the CFR as the first or second section of part 52 for each state subpart. After an initial two year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures, and will decide whether or not to retain the Identification of plan appendices for some further period.

What EPA Is Doing in This Action

Today's rule constitutes a ''housekeeping'' exercise to ensure that all revisions to the state programs that have occurred are accurately reflected in 40 CFR part 52. SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

How This Document Complies With the Federal Administrative Requirements for Rule Making

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled Regulatory Planning and Review.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If

the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Georgia compilation has previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 22, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. Section 52.570 is redesignated as § 52.590 and the heading and paragraph (a) are revised to read as follows:

§ 52.590 Original Identification of plan section.

(a) This section identifies the original ''Air Implementation Plan for the State of Georgia'' and all revisions submitted by Georgia that were federally approved prior to December 1, 1998.

* * * * *

3. A new § 52.570 is added to read as follows:

§ 52.570 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State implementation plan for Georgia under section 110 of the Clean Air Act, 42 U.S.C. 7401, and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to December 1, 1998, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after December 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of December 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.; or at the EPA, Air and Radiation Docket and Information

Center, Air Docket (6102), 401 M Street, SW., Washington, DC. 20460.

(c) EPA approved regulations.

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
391–3–1–.01	Definitions	11/20/94	02/02/96 61 FR 3817	
391–3–1–.02	Provisions.			
391–3–1–.02(1)	General Requirements	03/20/79	09/18/79 44 FR 54047	
391–3–1–.02(2)	Emission Standards	06/23/96	06/27/96 61 FR 33372	
391–3–1–.02(2)(a)	General Provisions	01/09/91	01/26/93 58 FR 6093	
391–3–1–.02(2)(b)	Visible Emissions	01/17/79	09/18/79 44 FR 54047	
391–3–1–.02(2)(c)	Incinerators	05/01/85	07/06/88 53 FR 25329	
391–3–1–.02(2)(d)	Fuel-burning Equipment	01/17/79	09/18/79 44 FR 54047	
391–3–1–.02(2)(e)	Particulate Emission from Manufacturing Processes.	01/17/79	09/18/79 44 FR 54047	
391–3–1–.02(2)(f)	Normal Superphosphate Manufacturing Facilities.	01/17/79	09/18/79 44 FR 54047	
391–3–1–.02(2)(g)	Sulfur Dioxide	12/03/86	58 FR 6093	
391–3–1–.02(2)(h)	Portland Cement Plants	01/17/79	09/18/79 44 FR 54047	
391–3–1–.02(2)(i)	Nitric Acid Plants	01/17/79	09/18/79 44 FR 54047	
391–3–1–.02(2)(j)	Sulfuric Acid Plants	01/17/79	09/18/79 44 FR 54047	
391–3–1–.02(2)(k)	Particulate Emission from Asphaltic Concrete Hot Mix Plants.	01/17/79	09/18/79 44 FR 54047	
391–3–1–.02(2)(l)	Conical Burners	01/17/79	09/18/79 44 FR 54047	
391–3–1–.02(2)(m)	repealed	06/30/75	10/03/75 40 FR 45818	
391–3–1–.02(2)(n)	Fugitive Dust	01/17/79	09/18/79 44 FR 54047	
391–3–1–.02(2)(o)	Cupola Furnaces for Metallurgical Melting.	01/27/72	37 FR 10842	
391–3–1–.02(2)(p)	Particulate Emissions from Kaolin and Fuller's Earth Processes.	12/16/75	08/20/76 41 FR 35184	
391–3–1–.02(2)(q)	Particulate Emissions from Cotton Gins.	01/27/72	05/31/72 37 FR 10842	
391–3–1–.02(2)(r)	Particulate Emissions from Granular and Mixed Fertilizer Manufacturing Units.	01/27/72	05/31/72 37 FR 10842	
391–3–1–.02(2)(t)	VOC Emissions from Automobile and Light Duty Truck Manufacturing.	12/20/94	02/02/96 61 FR 3817	
391–3–1–.02(2)(u)	VOC Emissions from Can Coating	01/09/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(v)	VOC Emissions from Coil Coating	01/09/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(w)	VOC Emissions from Paper Coating.	01/09/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(x)	VOC Emissions from Fabric and Vinyl Coating.	01/09/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(y)	VOC Emissions from Metal Furniture Coating.	01/09/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(z)	VOC Emissions from Large Appliance Surface Coating.	01/09/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(aa)	VOC Emissions from Wire Coating	01/09/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(bb)	Petroleum Liquid Storage	01/09/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(cc)	Bulk Gasoline Terminals	01/09/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(dd)	Cutback Asphalt	01/17/79	09/18/79 44 FR 54047	
391–3–1–.02(2)(ee)	Petroleum Refinery	01/09/91	10/13/92 57 FR 46780	

EPA APPROVED GEORGIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
391–3–1–.02(2)(ff)	Solvent Metal Cleaning	01/09/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(gg)	Kraft Pulp Mills	06/03/88	09/30/88 53 FR 38290	
391–3–1–.02(2)(hh)	Petroleum Refinery Equipment Leaks.	06/24/94	02/02/96 61 FR 3817	
391–3–1–.02(2)(ii)	VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products.	04/03/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(jj)	VOC Emissions from Surface Coating of Flat Wood Paneling.	04/03/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(kk)	VOC Emissions from Synthesized Pharmaceutical Manufacturing.	12/18/80	11/24/81 46 FR 57486	
391–3–1–.02(2)(ll)	VOC Emissions from the Manufacture of Pneumatic Rubber Tires.	12/18/80	11/24/81 46 FR 57486	
391–3–1–.02(2)(mm)	VOC Emissions from Graphic Arts Systems.	04/03/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(nn)	VOC Emissions from External Floating Roof Tanks.	12/18/80	11/24/81 46 FR 57486	
391–3–1–.02(2)(oo)	Fiberglass Insulation Manufacturing Plants.	12/18/80	11/24/81 46 FR 57486	
391–3–1–.02(2)(pp)	Bulk Gasoline Plants	04/03/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(qq)	VOC Emissions from Large Petroleum Dry Cleaners.	04/03/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(rr)	Gasoline Dispensing Facility—Stage I.	04/03/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(ss)	Gasoline Transport Vehicles and Vapor Collection Systems.	04/03/91	10/13/92 57 FR 46780	
391–3–1–.02(2)(uu)	Visibility Protection	10/31/85	01/28/86 51 FR 3466	
391–3–1–.02(2)(ww)	Perchloroethylene Dry Cleaners	11/15/94	06/27/96 61 FR 33372	Repealed.
391–3–1–.02(2)(zz)	Gasoline Dispensing Facilities—Stage II.	11/12/92	02/02/96 61 FR 3819	
391–3–1–.02(2)(ccc)	VOC Emissions from Bulk Mixing Tanks.	11/15/94	02/02/96 61 FR 3817	
391–3–1–.02(2)(eee)	VOC Emissions from Expanded Polystyrene Products Manufacturing.	11/15/94	02/02/96 61 FR 3817	
391–3–1–.02(3)	Sampling	11/20/94	02/02/96 61 FR 3817	
391–3–1–.02(4)	Ambient Air Standards	01/09/91	12/14/92 57 FR 58989	
391–3–1–.02(5)	Open Burning	05/27/85	08/09/88 53 FR 29890	
391–3–1–.02(6)	Source Monitoring	11/20/94	02/02/96 61 FR 3819	
391–3–1–.02(7)	Prevention of Significant Deterioration of Air Quality.	06/13/94	02/02/96 61 FR 3819	
391–3–1–.02(8)	New Source Performance Standards.	03/20/79	09/18/79 44 FR 54047	
391–3–1–.02(9)	Emission Standards for Hazardous Air Pollutants.	03/20/79	09/18/79 44 FR 54047	
391–3–1–.03	Permits	10/28/92	02/02/96 61 FR 3819	Paragraph (9) Permit Fees; Paragraph (10) Title V Operating Permits; Paragraph (11) Permit by Rule have not been federally approved.
391–3–1–.04	Air Pollution Episodes	11/20/75	08/20/76 41 FR 35184	
391–3–1–.05	Regulatory Exceptions	11/22/92	02/02/96 61 FR 3819	
391–3–1–.07	Inspections and Investigations	11/20/75	08/20/76 41 FR 35184	
391–3–1–.08	Confidentiality of information	11/20/75	08/20/76 41 FR 35184	
391–3–1–.09	Enforcement	11/22/92	02/02/96 61 FR 3819	
391–3–1–.10	Continuance of Prior Rules	11/22/92	02/02/96 61 FR 3819	

EPA APPROVED GEORGIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
391–3–10–.01	Definitions	11/22/92	02/02/96 61 FR 3819	
391–3–10–.04	Emission Control Inspection Procedures.	11/22/92	02/02/96 61 FR 3819	
391–3–10–.07	Qualifications for Mechanic Inspectors.	11/22/92	02/02/96 61 FR 3819	
391–3–10–.10	Records	11/22/92	02/02/96 61 FR 3819	
391–3–10–.12	Fees	11/22/92	02/02/96 61 FR 3819	
391–3–10–.24	Repairs: Reports, Failures, Reinspections, Owner's Consent.	11/22/92	02/02/96 61 FR 3819	
391–3–10–.30	Completion of Emission Inspection Sticker, Loss, Theft, Transferability of Same.	11/22/92	02/02/96 61 FR 3819	
391–3–20	Enhanced Inspection and Maintenance.	09/24/97	08/11/97 62 FR 42916	
391–3–21–.01	Definitions	05/22/94	12/21/95 60 FR 66150	
391–3–21–.02	Covered Area	05/22/94	12/21/95 60 FR 66150	
391–3–21–.03	Covered Fleet Operators	05/22/94	12/21/95 60 FR 66150	
391–3–21–.04	Covered Fleet Vehicles; Exemptions.	05/22/94	12/21/95 60 FR 66150	
391–3–21–.05	Determination of Capable of Being Centrally Fueled.	05/22/94	12/21/95 60 FR 66150	
391–3–21–.06	Purchase Requirements	05/22/94	12/21/95 60 FR 66150	
391–3–21–.07	Emission Standards	05/22/94	12/21/95 60 FR 66150	
391–3–21–.08	Credit Program	05/22/94	12/21/95 60 FR 66150	
391–3–21–.09	Transportation Control Measures	05/22/94	12/21/95 60 FR 66150	
391–3–21–.10	Requirements for Fuel Providers	05/22/94	12/21/95 60 FR 66150	
391–3–21–.11	Enforcement	05/22/94	12/21/95 60 FR 66150	

(d) EPA-approved State Source specific requirements.

EPA-APPROVED GEORGIA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Comments
Georgia Power Plant Bowen	EPD–AQC–180	11/17/80	08/17/81 46 FR 41498	
Georgia Power Plant Harllee Branch.	4911–117–6716–0	04/23/80	05/05/81 46 FR 25092	
ITT Rayonier, Inc	2631–151–7686–C	11/04/80	08/14/81 46 FR 41050	
Georgia Power Plant Bowen	EPD–AQC–163	05/16/79	01/03/80 45 FR 781	
Union Camp	2631–025–7379	12/18/81	04/13/82 47 FR 15794	
Blue Bird Body Company	3713–111–8601	01/27/84	01/07/85 50 FR 765	
Plant McDonough	4911–033–5037–0 conditions 10 through 22.	12/27/95	03/18/99 64 FR 13348	
Plant Yates	4911–038–4838–0 conditions 19 through 32.	12/27/95	03/18/99 64 FR 13348	
Plant Yates	4911–038–4839–0 conditions 16 through 29.	12/27/95	03/18/99 64 FR 13348	
Plant Yates	4911–038–4840–0 conditions 16 through 29.	12/27/95	03/18/99 64 FR 13348	
Plant Yates	4911–038–4841–0 conditions 16 through 29.	12/27/95	03/18/99 64 FR 13348	
Plant Atkinson	4911–033–1321–0 conditions 8 through 13.	11/15/94	03/18/99 64 FR 13348	

EPA-APPROVED GEORGIA SOURCE-SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Comments
Plant Atkinson	4911–033–1322–0 conditions 8 through 13.	11/15/94	03/18/99 64 FR 13348	
Plant Atkinson	4911–033–6949 conditions 5 through 10.	11/15/94	03/18/99 64 FR 13348	
Plant Atkinson	4911–033–1320–0 conditions 8 through 13.	11/15/94	03/18/99 64 FR 13348	
Plant Atkinson	4911–033–1319–0 conditions 8 through 13.	11/15/94	03/18/99 64 FR 13348	
Plant McDonough	4911–033–6951 conditions 5 through 10.	11/15/94	03/18/99 64 FR 13348	
Atlanta Gas Light Company	4922–028–10902 conditions 20 and 21.	11/15/94	03/18/99 64 FR 13348	
Atlanta Gas Light Company	4922–031–10912 conditions 27 and 28.	11/15/94	03/18/99 64 FR 13348	
Austell Box Board Corporation	2631–033–11436. conditions 1 through 5.	11/15/94	03/18/99 64 FR 13348	
Emory University	8922–044–10094 conditions 19 through 26.	11/15/94	03/18/99 64 FR 13348	
General Motors Corporation	3711–044–11453 conditions 1 thorough 6 and Attachment A.	11/15/94	03/18/99 64 FR 13348	
Georgia Proteins Company	2077–058–11226 conditions 16 through 23 and Attachment A.	11/15/94	03/18/99 64 FR 13348	
Owens–Brockway Glass Container, Inc.	3221–060–10576 conditions 26 through 28 and Attachment A.	11/15/94	03/18/99 64 FR 13348	
Owens–Corning Fiberglas Corporation.	3296–060–10079 conditions 25 through 29.	11/15/94	03/18/99 64 FR 13348	
William L. Bonnell Co	3354–038–6686–0 conditions 17 through 30.	11/15/94	03/18/99 64 FR 13348	
Transcontinental Gas Pipe Line Corporation.	4922–075–10217 conditions 21 through 24.	11/15/94	03/18/99 64 FR 13348	
Lockheed–Georgia Company	9711–033–11456 conditions 1 through 11.	11/15/94	03/18/99 64 FR 13348	
Blue Circle Incorporated Permit	3241–060–8670 conditions 48 through 54.	11/15/94	03/18/99 64 FR 13348	

(e) Reserved.

[FR Doc. 99–12488 Filed 5–20–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AC92

National Flood Insurance Program (NFIP); Determining the Write-Your-Own Expense Allowance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (FEMA) are changing our method for establishing the Write-Your-Own (WYO) expense allowance percentage for years beginning on or after October 1, 1999. We will use a new formula to derive the expense ratios in determining the operating portion of the expense allowance. This formula will use *direct,* as opposed to *net,* premium and expense information for the property/casualty industry and will have the effect of lowering the expense allowance. However, during arrangement year 1999–2000 only we will set the expense allowance at the mid-point between the expense allowance calculated using *direct* as opposed to *net* premium and expense information.

EFFECTIVE DATE: This rule is effective on October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Edward T. Pasterick, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., room 429, Washington, DC 20472, 202–646–3443, (facsimile) 202–646–3445, or (email) *edward.pasterick@fema.gov*. We will post at *www.fema.gov/nfip* the text of the 1999–2000 Arrangement by June 1, 1999.

SUPPLEMENTARY INFORMATION: On November 13, 1998, we proposed a rule at 63 FR 63432 that would change the method for establishing the Write Your Own (WYO) expense allowance percentage for arrangement years beginning on or after October 1, 1999. We proposed using a new formula to derive the expense ratios used in determining the operating portion of the expense allowance. This new formula would use *direct,* as opposed to *net,* premium and expense information for the property and casualty industry. It would have the effect of lowering the expense allowance to participating companies.

On Tuesday, February 9, 1999, we held a public meeting to discuss the proposed rule and other changes to the WYO expense allowance that were published in an advance notice of proposed rulemaking at 63 FR 63431, November 13, 1998. Nineteen people representing fourteen WYO companies and vendors attended this meeting. Most of the comments made at the public meeting duplicated the written comments submitted in response to the notice of proposed rulemaking. This Supplementary Information also discusses new comments made at that meeting.

General Comments

Concerns about reduced WYO company compensation. During the comment period, we received comments from ten WYO companies that opposed reducing the WYO expense allowance. The companies agreed that it is reasonable to use *direct* rather than *net*

data in order to establish the expense allowance percentage, but the overarching concern of the companies was that such a change would reduce company compensation. In every case where a commenter cited the differences or complexities of writing flood insurance, the underlying concern was not that we are creating a further complexity with this rule but that reducing the expense allowance will reduce profits. None of the companies, however, provided any data to support the assertion that their operating costs have increased during the fifteen years of operation of the WYO program. Nor has the WYO program ever guaranteed any set profit margin for participating companies.

We want to continue the same basic approach that we have used for more than 15 years. That is, we will continue to use published property/casualty industry expense information to derive flood insurance expense allowances. But we base our new formula on statistical data that were not available fifteen years ago when we established the compensation formula, that is, *direct* versus *net* premium.

Direct versus net premium. Our use of *direct* rather than *net* premium more accurately than before reflects the unique nature of the flood insurance partnership between the Government and industry where we assume liability for flood losses, and companies do not have to incur costs for reinsurance. A number of companies that commented on the proposed change agreed that this is a logical approach. At issue are the specifics of the formula we use to set compensation for participating companies.

We believe that continuing to use *net* rather than *direct* premium for the property/casualty industry as basis for compensation would neglect more refined data now available to us and would also include components that do not apply to the NFIP. Fifteen years ago, the Insurance Expense Exhibit for the property and casualty insurers did not provide direct premium and expense information comparable to what is available today in *Aggregates and Averages.* The result was that we calculated an expense allowance that all found in the early days of the program to be reasonable and acceptable.

Information on *direct* premiums, however, provides a superior indicator for computing the expense ratio. *Direct* premiums written represent the aggregate amount of recorded, originated premiums—other than reinsurance—written during a year after deducting all return premiums. *Net* premiums written include *direct* premiums written plus reinsurance assumed, less reinsurance ceded.

Reinsurance is not, however, a part of the WYO company's flood business because the Federal Government assumes liability for all losses. Therefore, the expense allowance should not include reinsurance in the calculation of the expense ratio. Using *net* premium has the effect of including non-applicable reinsurance costs and has had the effect of providing a WYO company with a level of compensation that is too high, one that we can no longer justify. This rule appropriately changes the basis for compensating companies and is adequate to compensate companies for doing business under the NFIP.

Final Decision on Compensation for Arrangement Year 1999–2000

At the February 9, 1999 public meeting, several companies asked us not to implement a change in the compensation formula from October 1, 1999 to October 1, 2000 before we study the change in more detail. We do not believe such a study is necessary. The WYO companies agreed that using *direct* as opposed to *net* data published by A.M. Best is reasonable. We recognize that any decrease in compensation will require adjustments by the WYO companies. Therefore, we have decided to provide a transition phase before the change we proposed on November 13, 1998 becomes effective.

As an accommodation, we will set the WYO expense allowance for FY 2000, which begins on October 1, 1999, at the mid-point between the expense allowance calculated using *direct* premium and expense information and the expense allowance calculated using *net* premium and expense information. This will give the companies a one-year adjustment period before they implement the new method for calculating the expense allowance.

For the 1999–2000 arrangement year, the midpoint is 31.7 percent, which compares with the base allowance for the current arrangement year of 31.6 percent. For FY 2001, beginning October 1, 2000, we will calculate the WYO expense allowance using *direct* premium and expense information.

We are working with the WYO companies to develop new incentives for rewarding companies' marketing efforts. These incentives will be in addition to the basic WYO expense allowance described above. We intend to put these new incentives in place on October 1, 1999.

Specific Comments

During the comment period, a number of Write-Your-Own companies submitted comments for consideration. We believe that we have addressed many of the underlying concerns of the commenters in the light of the accommodation we are making with this final rule. Since these comments comprise the public record on this rulemaking action, we state our position on these comments.

No "Built-In" Profits

Five companies expressed concerns that the proposed change in the expense allowance has no ''built-in'' profit margin for flood business and that companies may not accrue and retain interest on investment income—a potential source of profit. During the fifteen years of the WYO program, the expense allowance has never included a specific profit component in the expense allowance for participating companies. There is, however, an implicit profit margin because the program draws insurers whose costs are below the expense allowance. Hence, they earn a profit.

Also, private WYO participants, appropriately, may not retain interest on their flood premium income. WYO companies participate in the program without risk, that is, the Arrangement guarantees reimbursement for all loss payments. The ability to earn a return on invested premiums to pay for losses in other lines of insurance is not a consideration in flood insurance. The proposed change in the expense allowance does not affect that long-standing and appropriate restriction.

Commissions

One company believed that company profits decrease as companies compete for business by offering higher commissions as an incentive to attract agents. We have always maintained that what a company chooses to compensate agents is a matter between the company and the agent. We believe that fifteen percent is a reasonable compensation figure for agent commissions, which we account for in the expense allowance; however, if a company chooses to increase its commission as a business incentive, then that is the company's prerogative.

Reduced Expense Allowance May Reduce the Number of Participants

Five companies expressed concern that a reduction in the expense allowance will hurt the WYO program—marginal companies will withdraw and new companies will balk at joining the program. The result, these companies

believe, will be more business on the *direct* side and less growth in policies. One of our goals is to encourage insurers to participate and at the same time to hold the line on program costs which policyholders and taxpayers bear. But as with any industry, when competition increases, marginal participants may withdraw and new entrants can expect less profit. We do not believe that this is necessarily a negative consequence. We are also confident in our cost data, and we do not believe that the reduction in the expense allowance will cause withdrawals from the program by successful companies.

Reduced Expense Allowance May Result in Poor Customer and Agent Service

Two companies believed that the proposed reduction in the expense allowance could lead to a deterioration of services to policyholders and agents. We strongly disagree with this position. The expense allowance accounts for the costs needed to provide and maintain adequate services to NFIP policyholders and a profit for efficient companies.

Inherent Differences Between Flood Insurance and Other Lines

Eight companies said that the ''flood product'' is essentially different from other property/casualty insurance products because of the complexity in writing flood insurance. The companies claim that these complexities, for example, identifying risks ineligible for flood insurance under the Coastal Barrier Resources Act, increase costs. There are clearly differences between flood insurance and other lines of property and casualty insurance. Therefore, we believe that the five lines of property/casualty insurance that we have been using are still the best proxy for compensating WYO companies. But we also believe that using *direct* rather than *net* premium data will provide WYO companies with adequate compensation for their costs.

Flood Insurance Rating

Five companies also highlighted the difference in rating methodology for flood and for other lines of property and casualty insurance. The companies cited as an example flood maps, which they called ''antiquated.'' The companies also expressed concern over the use of ''non-standard'' forms such as the elevation certificate in the underwriting process. Because of these complexities, several of these companies have obtained the services of third parties to determine the flood zone on FEMA's maps for rating flood insurance policies. The companies expressed concern that these costs are not reimbursable under the program. While we do not reimburse companies specifically for outsourcing flood work, the method of determining the expense allowance by this rule is adequate to cover these costs.

Agent Training and Education

Several companies also expressed concern that agents find the flood insurance program complicated, which complexity creates a demand for training. Training of company agents is the primary responsibility of the company, and the expense allowance accounts for the expenses of a WYO company to train its agents. Still, we have made a commitment to help WYO companies with their agent training in the past, and we will continue to do so in the future. By the end of the current arrangement year, we will have conducted 150 workshops for insurance agents interested in selling flood insurance. The workshops are open not only to independent agents but also the agents of our WYO partners. We plan to hold the same number of workshops for agents next year as well. We have also helped participating companies develop training delivery systems of their own by conducting, upon request, train-the-trainer sessions on the NFIP for company trainers. To give agents immediate access to underwriting and rating information about the NFIP, we provide on our web site (*www.fema.gov/nfip*):

- The flood insurance manual,
- Underwriting information,
- A list of WYO companies,
- Dates and locations of agents workshops, and
- Other program information.

Statistical Reporting

Four companies expressed concern that the WYO program requires monthly statistical reporting whereas other lines of property and casualty insurance only require statistical reporting on a quarterly basis. This point is accurate. Most other lines require statistical reporting on a quarterly basis. Even so, the WYO program has been requiring statistical reporting on a monthly basis for fifteen years, and the method of setting the expense allowance under this rule is adequate to cover reporting costs as well.

Unique Adjuster Skills

Four companies also pointed out that handling flood claims requires unique adjuster skills with the adjusters certified by the Federal Government. This is also accurate. Adjusters handling flood claims under the Write Your Own program have, for fifteen years, needed special training and certification to adjust flood claims. Reducing the expense allowance does not affect this aspect of a company's participation in the WYO program. Training adjusters is a cost necessary to do business under the flood insurance program, a cost that we have taken into consideration in setting the expense allowance.

Higher Company Costs

Two companies commented that we used to provide forms, the flood insurance policy, manuals, and seminars free of charge to WYO companies. Companies must now cover the nominal costs to produce these materials and conduct training at their own expense. We recognize that companies are now paying for some products that were free; however, the general expense category of the WYO expense allowance compensates companies for these and other costs of selling and servicing flood insurance. Providing companies with free materials was for companies a further enrichment that we can no longer justify.

Acceptable Error and Reject Rates

Two companies expressed concern that maintaining acceptable error and reject levels is costly. Company systems, they claimed, for standard property and casualty processing, do not lend themselves to handling flood business. Therefore, many companies either outsource this part of their flood business or develop stand-alone systems. This is accurate. But again outsourcing or operating stand-alone systems is no different today than it has been for fifteen years since the start of the WYO program. Outsourcing or developing stand-alone systems is a cost of doing business under the program, a cost that participating companies willingly assume when they choose to join the program.

Audits

Two companies expressed concern that the WYO program requires an independent audit at the expense of the company. First, we always have required such an independent audit at the company's expense under this program. It is nothing new. In addition, independent audits of companies' financial statements are not a unique requirement of the flood insurance program. Any publicly traded company requires accountability to its shareholders in the form of financial statements that are subject to independent audits. Annual statements by insurance companies to the National Association of Insurance Commissioners are also subject to an independent audit.

Program Changes

Four companies expressed concern that frequent program changes require additional computer programming, new printing and publications, more training and mailings, as well as more rewriting of policies. These companies offered no specific data to indicate the relationship between the program changes and cost increases to implement those changes. We believe our data, which justify a lower expense allowance, take into consideration systems and other program changes that participating companies must make each year.

Reducing Expenses

One company suggested that we should conduct an analysis of ways to reduce expenses while improving service to policyholders before proposing to adjust the expense allowance formula. They contended that our proposal to reduce the expense allowance failed to consider how to reduce or eliminate operating costs. The responsibility to hold program costs to a minimum and to provide the highest service exists apart from the issue of the expense allowance. We agree that we must provide improved service at reduced costs, but our purpose in proposing the new expense allowance formula was to take advantage of data that were not available when we established the current formula. These new industry expense data support the proposed reduction in the expense allowance that, we believe, is adequate to cover companies' operating costs.

Alternative Formula

One company proposed an alternative formula for calculating the expense allowance. They suggested that we only use cost data for participating WYO companies rather than data for five property insurance lines and that we replace the fixed 15 percent commission allowance in the current formula with the ''Commission & Brokerage'' expense published in A.M. Best. Under their proposal, the ''Commission & Brokerage'', ''Other Acq.'', ''General Exp.'' and ''Taxes'' would be combined and the expense allowance would be set at the mean of this amount plus one standard deviation which, would cover the operating costs of approximately two-thirds of the companies. The commenter recognized that companies would have to report their expenses associated with the NFIP and suggested that this be done on a mandatory separate statement line on the NAIC Insurance Expense Exhibit. This company also proposed reporting this information annually and updating the WYO expense allowance every three years.

We have always favored using published average industry expense ratios for other acquisition, general expenses and taxes because neither we nor the WYO companies can affect those ratios. A disadvantage to the alternative approach to the proposed compensation formula is that it would impose an additional reporting requirement on the companies and require the NAIC to change the Insurance Expense Exhibit. We believe that for 15 years the formula for compensating the companies has been fair and that we should continue to use it in its current form based on the best available data.

Adverse Impact on Industry Ratios

One company said that the adverse impact on industry ratios and ratings, as a result of an insurer's decision to join the WYO program, should be a factor in determining the expense allowance level. We recognize that companies must report flood insurance activities on their financial statements that are used to derive industry ratios and ratings. However, we believe that a company should evaluate the impacts that reporting flood business will have on their industry ratios and ratings before deciding to participate in the WYO program. The effect of reporting this information will vary significantly among the WYO companies and is not easily measured. We do not believe the impact on industry ratios and ratings should be a factor in our compensation to companies, nor should it be a deterrent to companies participating in the program.

The Expense Allowance and Marketing Incentives

One company said that the expense allowance should recognize the marketing goals of the program, that is, to increase the policy base of the program. Part of that recognition, the company claimed, should include geographic distribution and retention of policyholders. In general, the marketing guidelines, which we have and will continue to develop in close coordination with the companies, address the overall issue of rewarding a company's growth. We have not included incentives designed to reward companies for selling and retaining policies in specific areas of the country because we do not have the data or indicators needed to target areas of the country for flood insurance marketing. When we have this capability, we will discuss whether and how to include geographic based marketing incentives in the compensation scheme with the WYO companies.

Use of Data Published by A. M. Best

Three companies commented that since 1994 we have not based the expense allowance solely on data published in A. M. Best's *Aggregates and Averages.* As an incentive for companies to increase the number of flood insurance policies, we set the expense allowance below the amount indicated by Best's data, and companies had the chance to earn additional expense allowance. The companies noted that they believed this was not a true bonus but a penalty if a company did not meet the marketing goal.

Granted, since 1994, we have not based the expense allowance strictly on Best's data. We did this because Best's was simply too high as a basis for company compensation. Beginning in arrangement year 1994–1995, we determined that the exact amount that a company may retain would be the extent to which the company met its marketing goal for the arrangement year and this amount could exceed the calculated amount. For arrangement year 1996–1997, a company could withhold 32.6 percent of written premium. If a company failed to meet its marketing goal, the percent of retained expense allowance decreased in proportion to the unmet goal but would not fall below 30.6 percent. If a company met its marketing goal, it would retain the entire 32.6 percent. If a company exceeded the goal, the exact amount of compensation depended on the extent to which the company exceeded its marketing goal, and the size of the company's flood business in relation to the total number of WYO policies. We are discussing alternative marketing incentives with the companies and plan to address this and other concerns in the next arrangement year.

Company Investments in Flood Business

Four companies commented that they had made investments to simplify writing flood insurance, which they believed they could recover based on the current expense allowance. The companies claimed that a reduced expense allowance would jeopardize this recovery. We have always encouraged company investments in their flood insurance business, and we believe that the expense allowance, which this rule implements, is adequate to cover start-up costs and other operational improvements. Such investments, when made wisely, result in improvements in productivity that

reduce the cost of doing business for a company and ultimately increase its profits.

Summary

We believe that basing the amount of compensation for companies participating in the WYO program on a formula using *direct* rather *net* premium simply takes advantage of statistical data unavailable fifteen years ago when we first established the compensation formula. This also better reflects the nature of the liability for companies because companies do not have to pay for reinsurance for their flood business since the Federal Government assumes the liability for flood losses. We believe however in the light of both the written comments and the comments we heard at the February 9, 1999 public hearing that a one-year transition will serve the interests of the program better. This transition will give the NFIP's industry partners time to adjust to the change in how we calculate the level of compensation for participating in the WYO program. This rule reflects that decision and adjusts the effective date of the arrangement to coincide with the start of Arrangement Year 1999–2000.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. We have not prepared an environmental assessment.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of sec. 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and the Office of Management and Budget has not reviewed it. Nevertheless, this rule adheres to the regulatory principles set forth in E.O. 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a ''major rule'' within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 62

Claims, Flood insurance.

Accordingly, we amend 44 CFR part 62, Appendix A, as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. We revise the *Effective Date* of Appendix A to part 62 to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

* * * * *

Effective Date: October 1, 1999.

* * * * *

3. We revise the Article III.B of Appendix A to part 62, to read as follows:

* * * * *

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

* * * * *

B. The Company may withhold as operating and administrative expenses, other than agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. of this article. This amount will equal the sum of the average of industry expense ratios for ''Other Acq.'', ''Gen. Exp.'' and ''Taxes'' calculated by aggregating premiums and expense amounts for each of five property coverages using direct, as opposed to net, premium and expense information to derive weighted average expense ratios. For this purpose, we (the Federal Insurance Administration) will use data for the property/casualty industry published, as of March 15 of the prior Arrangement year, in Part III of the Insurance Expense Exhibit in A.M. Best Company's *Aggregates and Averages* for the following five property coverages: Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril (non-liability portion). During the first year of this change—arrangement year 1999–2000—which begins October 1, 1999, the expense allowance is set at the mid-point between the expense allowance calculated using *direct* premium and the expense allowance calculated using *net* premium.

The Company may retain 15 percent of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

The amount of expense allowance retained by the company may increase a maximum of 2 percent, depending on the extent to which the company meets the marketing goals for the Arrangement year contained in marketing guidelines established pursuant to Article II.G. We will pay the company the amount of any increase after the end of the Arrangement year.

The Company, with the consent of the Administrator as to terms and costs, may use the services of a national rating organization, licensed under state law, to help us undertake and carry out such studies and investigations on a community or individual risk basis, and to determine equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. We will reimburse the Company for the charges or fees for such services under the provisions of the WYO Accounting Procedures Manual.

* * * * *

Dated: May 20, 1999.

Jo Ann Howard,

Federal Insurance Administrator.

[FR Doc. 99–12930 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–135; RM–8681]

Radio Broadcasting Services; Bear Lake and Honor, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule; application for review.

SUMMARY: This document denies an Application for Review of the *Memorandum Opinion and Order*, 62 FR 24055 (May 2, 1997), in this proceeding that allotted Channel 264A to Honor, Michigan, as that community's first local FM service. The proposal to add the channel to Honor was preferred over a proposal to upgrade the operation of Station WZTU(FM) by substituting Channel 264C2 for Channel 261A at Bear Lake, Michigan.

DATES: Effective May 21, 1999.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 95–135, adopted April 26, 1999, and released May 6, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–12799 Filed 5–20–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 98
Friday, May 21, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–034–1]

RIN 0579–AA96

Importation of Poultry Meat and Other Poultry Products From Sinaloa and Sonora, Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of animal products to relieve certain restrictions on the importation of poultry meat and other poultry products from the Mexican States of Sinaloa and Sonora. Currently, because of the existence of exotic Newcastle disease in Mexico, poultry meat and other poultry products from Sinaloa and Sonora must be cooked, sealed, and packaged, to certain specifications, to be eligible for importation into the United States. This proposal would establish new, less restrictive conditions for the importation of poultry meat and other poultry products from Sinaloa and Sonora into the United States. This action is based on a risk assessment indicating that such importations would present a negligible risk of introducing exotic Newcastle disease into the United States.

DATES: Consideration will be given only to comments received on or before July 20, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–034–1, Regulatory Analysis and Development, PPD, APHIS, suite 3CO3, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–034–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737, (301) 734–5034.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR), title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

Until recently, the regulations in parts 91 through 99 governed the importation of animals and animal products according to the recognized animal disease status of the exporting country. In general, if a disease occurred anywhere within a country's borders, the entire country was considered to be affected with the disease, and importations of animals or animal products from anywhere in the country were regulated accordingly. However, international trade agreements entered into by the United States—specifically, the North American Free Trade Agreement and the General Agreement on Tariffs and Trade—require APHIS to recognize regions, rather than only countries, as well as levels of risk, for the purpose of regulating the importation of animals and animal products into the United States. Consequently, on October 28, 1997, we published in the **Federal Register** a final rule (62 FR 56000–56026, Docket No. 94–106–9, effective November 28, 1997) that established procedures for recognizing regions and levels of risk for the purpose of regulating the importation of animals and animal products. In that rule, we also established procedures by which a region may request permission to export animals and animal products to the United States under specified conditions, based on the region's disease status.

On the same date, we also published a policy statement (62 FR 56027–56033, Docket No. 94–106–8) that explained that we will evaluate such requests on a case-by-case basis by analyzing the level of disease risk involved. Levels of risk exist upon a continuum. However, we established five benchmark categories—negligible, slight, low, moderate, and high—to give foreign regions a general idea of where they fit upon the risk continuum. According to our policy, once we have established the level of disease risk associated with the unrestricted importation of a particular type of animal or animal product, we will determine the import conditions needed to reduce that risk to a negligible level. Because of the number of potential variables and the vast number of possible combinations of those variables in assessing the risk of the unrestricted importation of animals and animal products from a region, the precise combination of measures necessary to reduce the risk of disease introduction to a negligible level will likely vary from region to region depending on the commodities to be imported and the diseases of concern.

The factors that we will consider in determining the level of risk associated with unrestricted importation of a particular type of animal or animal product from a region are:

1. The authority, organization, and infrastructure of the veterinary services organization in the region.

2. The type and extent of disease surveillance in the region—e.g., is it passive and/or active; what is the quantity and quality of sampling and testing?

3. Diagnostic laboratory capabilities.

4. Disease status—is the disease agent known to exist in the region? If ''yes,'' at what prevalence? If ''no,'' when was the most recent diagnosis?

5. The extent of an active disease control program, if any, if the agent is known to exist in the region.

6. The vaccination status of the region. When was the last vaccination? What is the extent of vaccination if it is currently used, and what vaccine is being used?

7. Disease status of adjacent regions.

8. The degree to which the region is separated from regions of higher risk through physical or other barriers.

9. The extent to which movement of animals and animal products is controlled from regions of higher risk, and the level of biosecurity regarding such movements.

10. Livestock demographics and marketing practices in the region.

11. Policies and infrastructure for animal disease control in the region—i.e., emergency response capacity.

The regulations in part 94 pertain to, among other things, the importation of meat and other animal products into the United States. Currently, § 94.6 governs the importation of carcasses, or parts or products of carcasses, of poultry, game birds, or other birds, from regions where exotic Newcastle disease (END) is considered to exist. Specifically, the regulations allow carcasses, or parts or products of carcasses of poultry, to be imported from regions where END is considered to exist for consumption if: (1) The poultry is packed in hermetically sealed containers and cooked by a commercial method after such packing to produce articles that are shelf stable without refrigeration, (2) the poultry is thoroughly cooked and appears to have a thoroughly cooked appearance throughout upon APHIS inspection at the port of arrival, or, (3) the poultry is imported under permit after APHIS determines the importation as such will not constitute a risk of introducing or disseminating END into the United States.

We are proposing to establish a new § 94.22, as discussed later in this document, to allow the importation of poultry meat and other poultry products from the States of Sinaloa and Sonora, Mexico, under conditions less restrictive than provided in § 94.6.

Our Proposal

In June 1994, the Government of Mexico officially requested that the United States recognize the Mexican States of Sinaloa and Sonora as free of END. In February 1997, a team of APHIS veterinarians conducted a site visit to verify that Sinaloa and Sonora were free of END and had the veterinary infrastructure, disease control programs, diagnostic capabilities, and surveillance programs necessary to prevent a recurrence of the disease. The site visit confirmed the information presented in the request by the Mexican Government. Copies of the APHIS site visit report may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** The APHIS team also determined that the poultry industries of Sinaloa and Sonora and Mexican agricultural officials were exclusively interested in the exportation of poultry meat and other poultry products and not live poultry to the United States.

Based on the information presented to APHIS by the Government of Mexico and our site visit to Sinaloa and Sonora, we have established the following facts, which correspond with the factors listed previously for determining the risk associated with unrestricted importation of a particular commodity from a region:

1. In Mexico, animal health functions are carried out by officials at the Federal level, who set policy, and by officials at the State level, who carry out program operations. The success of all disease eradication or control programs in Mexico largely depends on the relationship between these two levels of government and between governmental officials and the livestock industry. In Sinaloa and Sonora, a collaborative relationship exists between the poultry producer associations and State and Federal animal health officials. The success of the END eradication program in Sinaloa and Sonora has been largely due to the dedication and commitment of the industry and its willingness to work with animal health officials. In addition, State and Federal laws, regulations, policies, and infrastructure in Sinaloa, Sonora, and Mexico appear to be adequate to restrict movements of poultry and poultry products into Sinaloa and Sonora from any regions of Mexico where END may exist.

2. Prior to Mexico's declaration of Sinaloa and Sonora as free of END in May 1993, Sinaloa and Sonora State officials conducted serological surveys of all their commercial and backyard poultry flocks to verify the State's END-free status. These surveys were repeated again in 1997 and 1998. Sinaloa and Sonora have maintained active surveillance on commercial poultry populations since 1993, with 100 percent of commercial populations under active surveillance in 1997. All samples taken from commercial poultry populations since 1993 have tested negative for END. Small, private ''backyard'' poultry populations have been systematically sampled for END since 1997. All ''backyard'' flock samples taken since that time have also tested negative for END.

3. Samples from commercial farms in Sinaloa and Sonora and backyard flocks in Sinaloa are monitored for diseases at a Federally approved laboratory in Ciudad Obregon, Sonora. Samples from backyard flocks in Sinaloa are monitored at the central diagnostic laboratory outside Mexico City. Both laboratories have the capability to detect Newcastle disease either seriologically or by virus isolation.

4. The last case of END in Sinaloa or Sonora was reported in 1989, and Mexico declared both States free of the disease in 1993. The States of Chihuahua, Durango, and Baja California, which border Sinaloa and Sonora, have been recognized by Mexico as free of END. The State of Nayarit, which borders Sinaloa to the south, is the only State that borders Sinaloa that has not been recognized by Mexico as free of END. However, the last outbreak of END in Nayarit was reported in 1989.

5. Before 1992, Mexico's END eradication program was primarily focused on movement control. Surveillance and testing were passive, with samples submitted from reported suspect cases. The program was strengthened in 1992, when poultry producers enrolled their flocks in a national END certification program. During the last 3 years, the eradication program has been further strengthened by the participation of additional States, and by the initiation of active surveillance in the declared free States. States that move into the ''eradication'' phase of the campaign (no cases of END for at least 12 months) must establish an emergency response team.

6. Sinaloa and Sonora use the same vaccination method practiced in the United States: only lentogenic (low path) strains of Newcastle disease are used.

7. Sonora is bounded on the west by the Gulf of California, on the east by the Sierra Madre mountain ranges and the State of Chihuahua, on the north by the United States and the Mexican State of Baja California, and on the south by the State of Sinaloa. Baja California, Chihuahua, and Sinaloa have each been declared free of END by the Government of Mexico and have active disease surveillance and animal control programs as described above.

Sinaloa is bounded on the west by the Gulf of California, on the east by the States of Chihuahua and Durango and the Sierra Madre mountain ranges, on the north by the State of Sonora, and on the south by the State of Nayarit. Both Durango and Chihuahua have been recognized by the Government of Mexico as free of END. Nayarit has not been officially recognized as free from END, but has not had an outbreak of END since 1989.

8. The only adjacent area of higher risk for Sinaloa is the State of Nayarit. Man-made controls are in place along the Sinaloa-Nayarit border, and were judged to be adequate by the site-visit

team to prevent the reintroduction of END into Sinaloa or Sonora.

9. Sinaloa and Sonora strictly control the inter- and intrastate movement of livestock, poultry, and livestock and poultry products into and through each State. Trade and travel through the maritime ports and international airports are strictly monitored, as is vehicular movement within each State. Commercial vehicles with agricultural cargo must present proper sanitary documentation for the cargo or entry is denied. In addition, all vehicles entering Sinaloa and Sonora from Nayarit are inspected. Poultry products produced in States of lower health status than that of Sinaloa and Sonora may be imported only if the products meet time and temperature processing requirements and originate from a slaughter plant approved and inspected by a full-time salaried veterinarian of the Government of Mexico.

10. Commercial poultry production in Sinaloa is concentrated among a handful of producers on about 65 premises, who collectively own about 3 million laying hens and 28 million broiler chickens. One company alone owns 90 percent of the State's broiler chickens, and this company, along with two others, owns 50 percent of Sinaloa's laying hens. Broiler chickens in Sinaloa are vaccinated against Newcastle disease when they are 12 days old and are housed in highly integrated operations similar to those found in the United States. Such fully integrated operations in Sinaloa implement excellent biosecurity measures at all levels of production.

Commercially produced broilers in Sinaloa are processed in the only Federally approved inspection plant in the State, which processes an average of 120,000 birds per day. The integrated company that owns and operates the plant does not process birds from any other source.

Sinaloa produces sufficient broilers and table eggs to meet its consumption demands. Surplus meat and eggs (about 70 percent of egg production and 30 percent of meat production) are exported to other Mexican States.

Commercial poultry production in Sonora consists of one company, which maintains only six production farms. Broiler chickens are processed at an integrated company-owned plant, which processes 10,000 birds per day, and the meat is sold locally or is shipped to cities in northern Baja California.

Sonora also produces about 15 percent of the national production of table eggs.

The number of backyard flocks in Sinaloa and Sonora constitutes a small population, and biosecurity measures at these operations are virtually nonexistent. However, no auctions for trading backyard poultry exist in Sinaloa or Sonora, as backyard poultry is maintained for personal consumption. (Therefore, as described later in this document, we are proposing to allow the importation of poultry meat and other poultry products that are derived only from poultry that were raised in Sinaloa or Sonora and slaughtered in Sinaloa or Sonora at a federally inspected slaughter plant. The slaughter plant would have to be operated under the direct supervision of a full-time salaried veterinarian of the Government of Mexico and approved by USDA's Food Safety and Inspection Service (FSIS).)

11. State and Federal laws, regulations, policies, and infrastructure in Sinaloa and Sonora and the rest of Mexico appear to be adequate to maintain surveillance and control of END and to eradicate END rapidly in the event of an outbreak in the States of Sinaloa or Sonora.

These findings are described in further detail in a qualitative risk assessment that we prepared in accordance with the regionalization final rule and policy statement discussed previously. Our qualitative risk assessment concerning the importation of poultry meat and other poultry products from Federally inspected slaughtering establishments in Sinaloa and Sonora may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. The risk assessment indicated that the importation of poultry meat and other poultry products from federally inspected slaughtering establishments in Sinaloa and Sonora, Mexico, would present a negligible risk of introducing END into the United States.

Based on the finding of negligible risk, we are proposing to relieve restrictions on the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico. However, we are proposing to allow the poultry meat and other poultry products to be imported only under certain conditions, to help prevent the possibility that poultry meat and other poultry products from poultry raised in regions of Mexico other than Sinaloa or Sonora could be exported to the United States via Sinaloa or Sonora. We want to prevent the following possibilities: That poultry from regions of Mexico other than Sinaloa or Sonora could be moved to Sinaloa or Sonora for slaughter, processing, and export to the United States; that poultry meat or other poultry products from other regions could be moved to Sinaloa or Sonora for export to the United States; or that, once leaving Sinaloa or Sonora, poultry meat or other poultry products from Sinaloa or Sonora could be commingled with poultry meat or other poultry products from other regions of Mexico in transit to the United States. We believe that the proposed import conditions would provide protection against the occurrence of any of these scenarios. Following the list of import conditions is our basis for them.

Proposed Conditions

1. The poultry meat or other poultry products must be derived from poultry that were born and raised in Sinaloa or Sonora and slaughtered in Sinaloa or Sonora at a federally inspected slaughter plant under the direct supervision of a full-time salaried veterinarian of the Government of Mexico, and the slaughter plant must be approved to export poultry meat and other poultry products to the United States in accordance with 9 CFR 381.196.

2. If processed in any manner, the poultry meat or other poultry products must be processed at a Federally inspected processing plant in Sinaloa or Sonora under the direct supervision of a full-time salaried veterinarian of the Government of Mexico.

3. The poultry meat or other poultry products may not have been in contact with poultry from any State in Mexico other than Sinaloa and Sonora or from any other region not listed in § 94.6 as a region where END is not known to exist.

4. The foreign meat inspection certificate for the poultry meat or other poultry products (required by FSIS under 9 CFR 381.197) must be signed by a full-time salaried veterinarian of the Government of Mexico. The certificate must include statements that certify the above conditions have been met. The certificate must also show the seal number on the shipping container if a seal is required (see below).

5. In addition, if the poultry meat or other poultry products are going to transit any State in Mexico other than Sinaloa or Sonora or any other region not listed in § 94.6 as a region where END is not known to exist en route to the United States, a full-time salaried veterinarian of the Government of Mexico must apply serially numbered seals to the containers carrying the poultry meat or other poultry products at the Federally inspected slaughter or processing plant in Sinaloa or Sonora, and the seal numbers must be recorded on the foreign meat inspection certificate.

6. Prior to its arrival in the United States, the shipment of poultry meat or other poultry products may not have been in any State in Mexico other than Sinaloa or Sonora or in any other region not listed in § 94.6 unless the poultry meat or poultry products have remained under seal until arrival at the U.S. port and either (1) the numbers on the seals match the numbers on the foreign meat inspection certificate or (2) if the numbers on the seals do not match the numbers on the foreign meat inspection certificate, an APHIS representative at the port of arrival is satisfied that the poultry meat or poultry products were not contaminated during movement to the United States.

Basis for Proposed Conditions

We are proposing to require that the poultry meat and other poultry products come only from poultry slaughtered at Federally inspected slaughter plants in Sinaloa and Sonora that are approved to export poultry meat and other poultry products to the United States in accordance with 9 CFR 381.196. Such plants only accept poultry for slaughter if it is raised under adequate biosecurity for commercial sale. This proposed requirement would serve as an additional safeguard against the possibility that poultry meat or other poultry products from poultry raised in backyard farms could be exported to the United States.

We are proposing that processed poultry meat or other poultry products from Sinaloa and Sonora come only from Federally inspected processing plants in Sinaloa and Sonora because those plants must meet FSIS requirements in order to be approved to export poultry meat or other poultry products to the United States in accordance with 9 CFR 381.195 through 381.209. Further, those plants are under the direct supervision of full-time salaried veterinarians of the Government of Mexico.

The proposed requirement that the poultry meat and other poultry products may not have been in contact with poultry from any State in Mexico other than Sinaloa or Sonora, or from regions other than those listed in 94.6, is intended to ensure that the poultry meat and other poultry products were not exposed to END.

We are proposing to allow the poultry meat and other poultry products to transit other regions not listed in § 94.6 en route to the United States if the poultry meat and other poultry products are shipped in containers sealed with serially numbered seals at the Federally inspected slaughtering plant or processing plant in Sinaloa or Sonora and the containers arrive in the United States with the seals intact. The seal numbers would have to be listed on the foreign meat inspection certificate that accompanies the shipment. This precaution would ensure that the poultry meat and other poultry products have remained in closed containers during transit to the United States and have not become contaminated.

This proposed rule would also allow the importation of the poultry meat and other poultry products in containers bearing seals with different numbers than those listed on the foreign meat inspection certificate if our port inspectors can determine that an official of the Government of Mexico opened the original seals and then applied new seals. We realize the need to allow some flexibility in shipping and recognize that valid reasons may exist for the opening of containers and for the changing of numbers in transit. For example, many flights from Sinaloa and Sonora to the United States stop in Mexico City, and the containers may have to be opened for inspection by Mexican customs officials.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is summarized below, regarding the impact of this proposed rule on small entities. This analysis also serves as our cost-benefit analysis under Executive Order 12866. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic impact on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities, especially in the southwestern border states, that may incur benefits or costs from the implementation of this proposed rule.

In accordance with 21 U.S.C. 111, the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction or dissemination of the contagion of any contagious, infectious, or communicable disease of animals from a foreign country into the United States.

This proposed rule would amend the regulations to relieve certain restrictions on the importation of poultry meat and other poultry products from the States of Sinaloa and Sonora, Mexico, by establishing new conditions for the importation of poultry meat and other poultry products from Sinaloa and Sonora into the United States.

Currently, no poultry slaughter facilities in the States of Sinaloa or Sonora are approved to export poultry meat or other poultry products to the United States by the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture. Poultry processing facilities in Sinaloa and Sonora will need FSIS approval prior to exporting poultry to the United States. Further, based on the following analysis, we anticipate that if and when Mexican facilities receive FSIS approval to export poultry meat or other poultry products to the United States, the economic effect of those imports on U.S. producers and processors will be minimal.

As part of our analysis, we compared the expected benefits of poultry imports from Sinaloa and Sonora to the expected costs resulting from a possible disease outbreak. A qualitative risk assessment prepared by APHIS indicates that the expected costs of disease introduction are likely to be zero, as the proposed imports pose a low probability of causing an outbreak of END in the United States. The hazard of concern regarding these potential imports is exotic Newcastle disease (END).

The benefits of allowing poultry imports from Sinaloa and Sonora under less restrictive conditions are calculated as the net change in consumer and producer surplus that results from the estimated volume of trade. Assuming that, among other things, poultry meat and other poultry products from Sinaloa and Sonora would be a perfect substitute for domestic poultry meat and other poultry products, it is estimated that the net benefits of the proposed imports would be positive. Allowing importations of poultry meat and other poultry products from Sinaloa and Sonora would cause U.S. farm gate prices to decrease marginally, benefiting U.S. consumers.

Our economic analysis examines the potential economic effects of such imports under low- (100 metric tons per year), medium- (1,000 metric tons per year), and high- (5,000 metric tons per year) volume scenarios. We chose these levels because 5,000 metric tons is the highest volume of poultry meat Mexico has ever exported to the world. Further,

recently, there have been years when Mexico has exported no poultry meat. Therefore, we used the above import level scenarios based on Mexico's poultry export history,

For the low-volume scenario, consumer surplus is estimated to increase by $67,172 (1996 dollars) and producer surplus would decrease by $67,166, resulting in a net annual benefit of $6. The price of poultry would fall by $0.006 per metric ton. The medium-volume scenario shows an increase in consumer surplus of $671,734, a decrease in producer surplus of $671,645, and a net benefit of $89. The price of poultry would decrease by $0.063 per metric ton. Under the high-volume scenario, consumer surplus would rise by $3,358,942, and producer surplus would fall by $3,357,902, for a net benefit of $1,040. Poultry prices would decrease by $0.30 per metric ton. It is apparent that expected impacts are very small for each of the scenarios.

The United States' Poultry Market

Since the mid-1960s, there have been dramatic changes in the market structure, production technology and retail marketing of broiler products. Production efficiency has been increased by continuing improvements in genetics, nutrition, housing, equipment, disease control, and management. Improved production efficiency is demonstrated in the reduction of feed and time required for producing a broiler chicken. Growing a 4.5 lb. broiler in 1940 required 14 weeks and 4 lb. of feed per pound of live bird. Today, the same size bird can be produced in 6.5 weeks with less than 2 lb. of feed per pound of bird.

Managerial decisionmaking has shifted from single proprietorship farming operations to vertically integrated poultry producing-processing-marketing firms, in which production and marketing decisions are centralized in a single entity that is either owned directly or controlled through contracts.

Improvement in poultry house technology enables producers to raise chickens in large confinement units throughout the year, resulting in increased production efficiency and consequent reductions in production cost. By 1995, almost all (99 percent) broilers were produced by vertically integrated companies. In 1978, in the United States, the four largest broiler companies controlled 21.4 percent of national production, and the eight largest broiler companies controlled 36.1 percent. By 1992 the four largest companies produced approximately 41 percent of national production, while the eight largest companies produced about 56 percent.

The potential economic effects of the proposed importation of poultry meat and other poultry products from the Mexican States of Sinaloa and Sonora on national, regional, and local poultry producers are dependent on a number of factors, such as where the products would be consumed in the United States. While it is currently unknown exactly how poultry meat and other poultry products from Sinaloa and Sonora would enter U.S. marketing and distribution channels and where they would ultimately be consumed, it is likely that they would be shipped by truck through Nogales, AZ. Other U.S. States in the region that could receive poultry from Sinaloa and Sonora are California, New Mexico, and Texas. It is unclear whether poultry from Sinaloa and Sonora would be consumed only in these four States. If poultry from Sinaloa and Sonora were purchased by a local retail chain or wholesaler, it would likely be consumed regionally. If it were purchased by a national wholesaler, it could be consumed anywhere in the United States. The effect on small producers would be more pronounced if Sinaloa and Sonora imports affected only California, Arizona, New Mexico, and Texas producers. For the purpose of this analysis, we examined both the possibility that poultry meat and other poultry products from Sinaloa and Sonora would be consumed locally in these four southwestern States, and also the possibility that they would enter national distribution channels.

The Small Business Administration (SBA) defines small poultry farms (Standard Industrial Code 0251) as those earning less than $500,000 in annual sales, except for sales of chicken eggs. Industry experts suggest that only those poultry operations producing in excess of 270,000 broiler chickens would earn $500,000 or more in sales annually.

According to the SBA definition, at least 99 percent of poultry farms in Arizona, New Mexico, and Texas and 97 percent of poultry farms in California are small entities. There were 1,425 small poultry farms in the four states in 1992, and only 7 farms with estimated annual revenues greater than $500,000. For the United States as a whole, in 1992, there were an estimated 11,626 small poultry farms, and 14 large poultry farms. Although some structural changes may have occurred among broiler producers since the 1992 Census of Agriculture, it can be assumed that poultry farms remain predominantly small entities.

According to the 1992 Census of Agriculture, in 1992, California's average sales by small broiler farms ($97,540) were higher than the national average ($85,883), while sales in Texas were lower ($73,429). There are no comparable data for Arizona's and New Mexico's broiler farmers.

Whether we consider the United States as a whole or only selected southwestern States, the overwhelming majority of poultry farms are small entities. It is reasonable to conclude that, if U.S. poultry producers are affected by this proposed rule, a substantial number would be small entities.

Economic Impact on Small Entities

There is no general rule that sets threshold or trigger levels for ''significant economic impact;'' however, it has been suggested that an economic effect that equals a small business' profit margin—5 to 10 percent of annual sales—could be considered significant.[1]

We used estimated changes in producer surplus together with the 1992 Census of Agriculture data on poultry inventories and poultry sales to develop very rough estimates of the economic impact of the proposed rule on small poultry farmers across the United States and in selected southwestern States. To do this, we assumed that losses in producer surplus are shared equally among all poultry farms in the geographic area under consideration (either the entire United States or selected southwestern States). We then compared per farm changes in producer surplus with small farms' annual sales to determine whether the economic effects approached the 5–10 percent threshold.

If poultry meat and other poultry products from Sinaloa and Sonora entered national distribution channels and, therefore, economic effects were shared by all U.S. producers, there would not be a significant economic impact on small entities no matter which level (low, medium, or high volume) of imports is assumed. Producer surplus losses per U.S. poultry farm would range from $2 to $103 per year, and these amounts are substantially less than 1 percent of the typical small poultry farmer's annual sales in every scenario.

If, under the high-volume scenario, the maximum 5,000 metric tons were imported annually from Sinaloa and Sonora and consumed locally in Arizona, California, New Mexico, and Texas, there likely would not be a

[1] Verkuil, *Duke Law Journal*, 1982.

significant economic impact on small entities no matter which level (low, medium, or high volume) of imports is assumed. Producer surplus losses per poultry farm in the selected southwestern States would range from $10 to $488 per year, and these amounts are less than 1 percent of the typical small California or Texas poultry farmer's annual sales in every scenario. Since we have no data available on sales in Arizona and New Mexico, we cannot determine the effect of this proposal on producers in those States.

A substantial number (99 percent) of U.S. broiler farms meet the SBA size criteria for designation as small entities. However, the proposed rule is not likely to have a significant economic impact on them. Even under the high-volume import assumption, there would not be a significant economic impact on small U.S. poultry farms, no matter where the Mexican poultry is imported and consumed. Under the most extreme assumptions (imports of 5,000 metric tons and limited geographic area affected), small poultry producers in California and Texas would experience losses in producer surplus equaling less than 1 percent of annual sales, which does not meet the suggested criteria for significant economic impact. Further, we expect that this action will have a similar effect on small poultry producers in Arizona and New Mexico, though we do not have the data to confirm this.

If this rule is adopted, it is very unlikely that a volume of 5,000 metric tons of poultry meat or other poultry products will be exported from Sinaloa and Sonora to the United States since Mexico is not a major exporter of poultry meat or other poultry products. Mexico had yearly world exports of 5,000 metric tons of poultry meat and poultry products in 1990, 1991, and 1992. However, in 1993, 1994, 1995, Mexico exported no poultry meat and other poultry products, and since 1996 has exported less than 1000 metric tons of poultry meat and other poultry products annually.

Further, even under the high-volume scenario (5,000 metric tons), Mexico's exports to the United States represent less than .05 percent of total U.S. poultry production (over 14 million metric tons in 1997).

Alternatives Considered

In developing this proposed rule, we considered: (1) Making no changes to the existing regulations governing the importation of poultry meat and other poultry products from Sinaloa or Sonora, Mexico; (2) proposing to allow the importation of poultry meat and other poultry products from Sinaloa and Sonora under conditions different from those proposed; or (3) proposing to allow the importation of poultry and poultry products from Sinaloa and Sonora under the conditions proposed in this document.

We rejected the first alternative because poultry meat and other poultry products from Sinaloa and Sonora appear to present little risk of introducing END into the United States, and taking no action would not be scientifically defensible and would be contrary to trade agreements entered into by the United States. We also rejected the second alternative, which would allow the importation of poultry meat and other poultry products from Sinaloa and Sonora under conditions other than those proposed. We believe that using conditions less stringent than those proposed for the importation of poultry meat and other poultry products from Sinaloa and Sonora would increase the risk of the introduction of END into the United States to more than a negligible level and that using more stringent conditions would be unnecessarily restrictive. We believe the proposed conditions to be both effective and necessary in reducing to a negligible level the risk of the introduction of END through the importation of poultry meat and other poultry products imported into the United States from Sinaloa and Sonora, Mexico. Further, we invite public comment on the risk-mitigating controls and requirements we have proposed in this document.

The proposed changes to the regulations would result in new information collection or recordkeeping requirements, as described below under the heading ''Paperwork Reduction Act.''

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this proposed rule. The assessment provides a basis for the conclusion that the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, under the conditions specified in this proposed rule would not present a significant risk of introducing or disseminating END into the United States and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–034–1. Please send a copy of your comments to: (1) Docket No. 98–034–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the regulations to relieve certain restrictions on the importation of poultry meat and other poultry products from Sinaloa and

Sonora, Mexico, by establishing new conditions for the importation of fresh and processed poultry and poultry products from Sinaloa and Sonora into the United States.

Implementing this proposed rule would necessitate the use of two paperwork collection activities: the completion of a foreign meat inspection certificate and the placing of seals on shipping containers.

We are asking OMB to approve our use of these information collections in connection with our program to import poultry meat and other poultry products from the Mexican States of Sinaloa and Sonora.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the proposed information collection on those who are to respond, (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this proposed collection of information is estimated to average 0.133 hours per response.

Respondents: Full-time, salaried veterinarians of the Government of Mexico.

Estimated annual number of respondents: 4.

Estimated annual number of responses per respondent: 15.

Estimated annual number of responses: 60.

Estimated total annual burden on respondents: 8 hours.

Copies of this information collection can be obtained from Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. A new § 94.22 would be added to read as follows:

§ 94.22 Importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico.

Notwithstanding any other provisions of this part, poultry meat and other poultry products from the States of Sinaloa and Sonora, Mexico, may be imported into the United States under the following conditions:

(a) The poultry meat or other poultry products are derived from poultry born and raised in Sinaloa or Sonora and slaughtered in Sinaloa or Sonora at a federally inspected slaughter plant under the direct supervision of a full-time salaried veterinarian of the Government of Mexico, and the slaughter plant must be approved to export poultry meat and other poultry products to the United States in accordance with 9 CFR 381.196.

(b) If processed, the poultry meat or other poultry products were processed in either Sinaloa or Sonora, Mexico, in a Federally inspected processing plant that is under the direct supervision of a full-time salaried veterinarian of the Government of Mexico.

(c) The poultry meat or other poultry products have not been in contact with poultry from any State in Mexico other than Sinaloa or Sonora or with poultry from any other region not listed in § 94.6 as a region where exotic Newcastle disease is not known to exist.

(d) The foreign meat inspection certificate accompanying the poultry meat or other poultry products (required by § 381.197 of this title) includes statements certifying that the requirements in paragraphs (a), (b), and (c) of this section have been met and, if applicable, listing the numbers of the seals required by paragraph (e)(1) of this section.

(e) The shipment of poultry meat or other poultry products has not been in any State in Mexico other than Sinaloa or Sonora or in any other region not listed in § 94.6 as a region where exotic Newcastle disease is not known to exist, unless:

(1) The poultry meat or other poultry products arrive at the U.S. port of entry in shipping containers bearing intact, serially numbered seals that were applied at the Federally inspected slaughter plant by a full-time salaried veterinarian of the Government of Mexico, and the seal numbers correspond with the seal numbers listed on the foreign meat inspection certificate; or

(2) The poultry meat or other poultry products arrive at the U.S. port of entry in shipping containers bearing seals that have different numbers than the seal numbers on the foreign meat inspection certificate, but, upon inspection of the hold, compartment, or container and all accompanying documentation, an APHIS representative is satisfied that the poultry containers were opened and resealed en route by an appropriate official of the Government of Mexico and the poultry meat or other poultry products were not contaminated or exposed to contamination during movement from Sinaloa or Sonora to the United States.

Done in Washington, DC, this 17th of May 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–12885 Filed 5–20–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 153, 157, 380

[Docket No. RM98–17–000]

Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements; Notice of Proposed Rulemaking

April 28, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations under the Natural Gas Act (NGA) by adding certain early landowner notification requirements that will

ensure that landowners who may be affected by a pipeline's proposal to construct natural gas pipeline facilities have sufficient opportunity to participate in the Commission's certificate process. The Commission also proposes to amend certain areas of its regulations to provide pipelines with greater flexibility and to further expedite the certificate process, including expanding the list of activities categorically excluded from the need for an environmental assessment in section 380.4 of the Commission's regulations; (2) expanding the types of events that allow pipelines to rearrange facilities under their blanket construction certificate; and (3) allowing pipelines to drill observation wells under their blanket construction certificate.

Finally, the Commission also proposes to require that pipelines consult with the National Marine Fisheries Service concerning essential fish habitat as required by regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act; and apply the Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures to activities conducted under the pipeline's blanket construction certificate.

DATES: Comments are due June 21, 1999.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

John S. Leiss, Office of Pipeline Regulation, Federal Energy Regulatory Commission 888, First Street, N.E., Washington, D.C. 20426, (202) 208–1106

Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2246

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations under the Natural Gas Act (NGA) by adding certain early landowner notification requirements that will ensure that landowners who may be affected by a pipeline's proposal to construct natural gas pipeline facilities have sufficient opportunity to participate in the Commission's certificate process. The Commission also proposes to amend certain areas of its regulations to provide pipelines with greater flexibility and to further expedite the certificate process, including: (1) Expanding the list of activities categorically excluded from the need for an environmental assessment in section 380.4 of the Commission's regulations; (2) expanding the types of events that allow pipelines to rearrange facilities under their blanket construction certificate; and (3) allowing pipelines to drill observation wells under their blanket construction certificate.

Finally, the Commission also proposes to: (1) require that pipelines consult with the National Marine Fisheries Service concerning essential fish habitat as required by regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act; and (2) apply the Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures to activities conducted under the pipeline's blanket construction certificate.

II. Background

As part of an ongoing review of its regulations, the Commission continues to try to find ways to make its certificate process more efficient and effective. Recently, it has become evident that landowners that may be affected by a pipeline's proposal to construct facilities want earlier and better notice of that pipeline's intent to construct pipeline facilities on or near their property.

Under the Commission's current practice, landowners with property on a proposed pipeline route, adjacent to compressor station or LNG plant sites, or adjacent to existing fee-owned rights-of-way which would be used for a proposed pipeline are generally notified by the Commission as part of its environmental review of the proposed project. Specifically, a pipeline seeking authorization to construct these facilities provides the Commission with a list of names of the landowners that would be affected by the project when, or shortly after, it files the construction application. The Commission then notifies the people on the pipeline's landowner list when it issues a Notice of Intent to Prepare an Environmental Impact Statement (EIS) or Environmental Assessment (EA) as required by the National Environmental Policy Act of 1969 (NEPA).[1]

The Notice of Intent is mailed to the affected landowners after the Commission has begun to process the pipeline's application and after the Commission notices the application for the new facilities and, usually, after the intervention period has run.[2] The Notice of Intent: (1) Summarizes the proposed project; (2) describes the environmental review process; (3) identifies the environmental issues raised by the project; and (4) explains how the public can participate in the environmental review process. It also includes the text from the Commission's pamphlet ''An interstate natural gas pipeline on my land? What do I need to know?'' The Notice of Intent invites landowners to participate in the Commission's environmental review process either by becoming an intervenor for environmental purposes or by submitting environmentally-related

[1] Specifically, NEPA requires that federal agencies carefully weigh the potential environmental impact of all their decisions and consult with federal and state agencies and the public on serious environmental questions.

[2] Once the application is filed, the Commission issues a notice of the filing, which is published in the **Federal Register**. The notice appears approximately 10 days after the filing. The notice specifies an intervention period, usually 21 days from the notice date.

comments on the pipeline's proposal. The purpose of the Notice of Intent is to notify the affected landowners of the environmental review of the project and only seeks comments on environmental issues. Generally, the Notice of Intent does not provide the landowners with a forum to raise non-environmental issues.

Recently, landowners and other citizens have expressed increasing interest in participating in the major pipeline projects, especially the greenfield pipelines and pipeline expansions in heavily populated areas.[3] Generally, landowner groups contend that they are uninformed and uneducated about their right to participate in the certificate process and do not know where to go for information. Further, they assert that they are notified too late in the process to actively participate or have a say in the proceeding.

Senator Fred Thompson and Representative Zach Wamp introduced legislation (S. 1687 and H.R. 3319, respectively) that would require that pipelines make a good faith effort to notify property owners from whom they may seek to acquire a property interest through the exercise of eminent domain. The proposed legislation required that a notice be sent by certified mail, and on the same day the company files an application.

On September 16, 1998, the Interstate Natural Gas Association of America (INGAA) proposed that the Commission formalize notice procedures using the proposed legislation as a starting point. Generally, INGAA proposed that on the business day following the date the pipeline files the application, the company would make a good faith effort to notify, by certified mail, any person who is the owner of record of real property that would be subject to the exercise of eminent domain under the NGA.

On September 30, 1998, the Commission issued a notice on its intent to hold a staff technical conference to address, among other things, concerns regarding its present landowner notification policies. Additionally, the notice invited interested persons to submit written comments. The Commission received written comments from approximately 33 commenters. In their filed comments, the industry generally supported the INGAA proposal or stated that no changes to the current procedure were necessary. However, in their filed comments the landowner groups contended that notice should be given before the application is filed so they have a meaningful opportunity to participate in the siting process.

The notice also raised other issues related to landowner notification. One was how the pipeline would notify landowners and get their consent if the Commission expanded its definition of eligible facilities to include injection, withdrawal, and observation wells. The Commission also was concerned about how the pipeline would acquire landowner consent to use additional work space for replacement facilities.

Another area raised in the September 30 notice was the Commission's plan to designate residential areas as sensitive environmental areas as defined in section 157.202(b)(11) of the Commission's regulations. The Commission also sought comments on applying erosion control and stream and wetland crossing mitigation measures to blanket construction projects. Finally, the Commission mentioned that it might employ a negotiated rulemaking procedure as an alternative to its traditional rulemaking process in this proceeding.

On December 9, 1998, the Commission held the technical conference. At the conference, the industry was represented by Duke Energy Pipelines (Duke Energy), Enron Interstate Pipelines (Enron), Transcontinental Gas Pipe Line Company (Transco), and INGAA. The landowners were represented by the GASP Coalition, the Citizens Advocates for Pipeline Safety, the Newton Citizens Committee, and the Ohio-PA Landowners Association. Representatives for the Pipeline Contractor's Association and Central Maine Power Company (Central Maine) also participated. Several parties, including INGAA and GASP, filed follow-up comments after the conference. The filed comments and comments made at the technical conference are discussed below.

III. Discussion

A. Landowner Notification

1. Notification Process

a. *Comments.* Most parties agree that the Commission should modify its current landowner notification policy. The Process Gas Consumers Group, the American Iron and Steel Institute and the Georgia Industrial Group (jointly Process Gas) contends that the Commission's current notification policy and publication of the notice in the **Federal Register** is sufficient to notify landowners. It argues that any new requirements would create new procedural traps. Williston Basin Interstate Pipeline Company (Williston Basin) also does not believe that additional notification requirements are necessary. It argues that the Commission should make additional notice requirements performance based and only impose those requirements on problem pipelines. For example, if the Commission receives no complaints, the pipeline should be deemed to have performed in a satisfactory manner.

Generally, the industry posits that the landowners should be notified after the application is filed, whereas, the landowner groups want to be notified before the application is filed. This latter position is also supported by the Public Service Commission of the State of New York (NYPSC). The Iowa Utilities Board (Iowa Board) suggests that the Commission consider requiring pre-filing informational meetings.

The Iowa Board and NYPSC state that the pipelines should not consider landowner notification as an onerous duty, but as an opportunity to establish an early rapport with landowners and to obtain information early in the process. They promote informal meetings with the public before the pipeline files the application. They believe that this process provides an opportunity for the pipeline to initiate favorable relationships with landowners and to obtain input to refine its petition and better determine the best location for the pipeline. While many of the pipelines claim that they contact many of the landowners early on during the surveying process, they do not want the Commission to specifically make this a requirement.[4]

As stated, the landowner groups want to be notified before the application is filed. They contend, as does the NYPSC, that there is significant benefit in obtaining early and ongoing public information and participation. They state that the initial notification should be early enough in the planning of a proposed line so that the potentially affected landowners have the opportunity to participate fully in the

[3] Greenfield pipelines are pipeline proposals that will be located in a new pipeline right-of-way for most of their length.

[4] Duke stated that it contacts individual landowners on proposed rights-of-way early in the project and continues the process of education by ''notification to public officials, open house meetings, media notifications, agency meetings, newsletters, landowner brochures and face-to-face survey permission contracts and easement negotiations with landowners.'' See Duke's comments, at 3. El Paso Energy Corporation (El Paso) notes that it generally contacts landowners along the route in order to conduct required surveys before a certificate application is filed. Williston Basin states that it has its initial contact with landowners during the survey process. Enron agrees pre-filing conferences are useful, but contends that they do little to foster landowner relationships.

siting process. They contend that public involvement, including identification of alternative locations, can help create a process where issues are identified and addressed in cooperative fashion during the project development. They envision that such cooperation can facilitate analyses and the development of environmental reports.

The landowner groups and NYPSC argue that lack of notice to landowners can generate significant delays. They claim that notification at time of application is too late. They assert that by the time the application is filed many decisions may have already progressed beyond the point of no return. Further, property owners do not have access to expertise to file timely motions to intervene to protect their interest. Moreover, even timely intervention is too late if lines have already been drawn on a filed map and costly resources committed by the applicant to a particular route.

In response, the pipelines contend that it is confusing and impractical to formally notify all potentially affected landowners prior to filing. They also argue that formal notification in advance of filing creates a threatening environment and would prematurely narrow the window of negotiation. Finally, they assert that inviting landowners to collaborate with the pipeline to determine a proposed route in advance of filing a certificate application would only pit landowner against landowner. They argue that it is the pipeline's responsibility to choose the route.

As stated, INGAA generally proposes to send notification by certified mail on the next business day after the application is filed. It states that requiring the notification to be sent on the next business day will allow the pipeline to include the project's docket number in the notification. El Paso, on the other hand, contends that one day after filing is not reasonable. It argues that it would be impossible to get the docket number, incorporate it in a letter, assemble a landowner package, and effectuate mailing all in one day. It states that such a procedure would be labor intensive and a significant administrative burden. It also asserts that certified mailing imposes additional costs on the pipeline. It recommends that the Commission require notice within five business days if the docket number is provided on the day of filing. Williston Basin states that although it has its initial contact during the survey process, the Commission should allow the pipelines the option to either deliver the notice by hand or by the mail either before the application is filed or up to three business days after filing.[5] It contends that notification by mail is not conducive to the continuation of good relationships. It believes personal contact is better.

As stated, INGAA proposes to notify the landowners by certified mail. Great Lakes objects to sending the notice by certified mail because it could delay receipt and could be unduly burdensome. It contends that many landowners may not be able to accept delivery and that certified mail creates needless anxiety. It recommends the Commission only require that the company provide an affidavit signed by an authorized representative of the company stating that it made a good faith effort to provide notice to all owners of record by regular mail.

b. *Commission Response.* We agree with NYPSC and the Iowa Board that an early dialog and personal contact between the pipeline and the community and landowners, perhaps in pre-filing informational meetings, would promote more favorable relationships between the pipelines and the potentially affected landowners. As stated, many of the pipelines stated that they do contact landowners prior to filing a construction application. It is in the pipeline's best interest to attempt to involve the public early on in the process by seeking their input before determining the exact route of the proposed pipeline. As the Iowa Board points out, pre-filing meetings with the potentially affected landowners provides the pipelines with valuable information ''from persons with knowledge of the route area which may impact routing or design.'' [6]

Further, as stated, in Docket No. RM98–9–000, the more thorough and the more complete an application is when it is filed, the more expeditiously the Commission can process that application. Earlier landowner participation could result in a more definitively defined route. Specifically, the Commission experiences significant delays in processing a certificate application because of the time needed to address and resolve numerous landowner concerns about the placement of the pipeline on their property. If the pipeline could resolve these issues prior to filing the application, the Commission could process the application more expediently.

A recent study conducted by Florida Gas Transmission Company (Florida Gas) [7] stated that over half the people interviewed suggested that Florida Gas:

> Hold regular public meetings before and during construction to allow citizens to participate in dialogue about the project, to ask questions and to provide input to the route selection. * * * Many cautioned that communications must be honest and open. They said the company must not be too ''aggressive'' or ''pushy'' but, instead, to take the time to build public support up-front.

Further, at the December 9 conference, representatives from Duke and Enron stated that their companies frequently contact landowners during the initial planning stage with beneficial results.[8]

While the Commission encourages pipelines to hold pre-filing meetings, it does not believe it is necessary to mandate pre-filing meetings at this time. This is especially true given the indications that some pipelines are attempting more dialogue early on with communities and landowners. However, we invite public comment on whether the Commission should have a more formal (structured) pre-filing public notification requirement.

Therefore, in accord with INGAA's proposal and the aforementioned proposed legislation, the Commission proposes new sections 153.3, 157.6(d), and 157.103 to require that for all section 7 projects pipeline companies notify all affected landowners of record from the most recent tax rolls by certified or first class mail within three (3) business days following the date they file their application with the Commission. The pipeline should file an affidavit with the Environmental Resource Report 1 as required in proposed section 380.12(c)(10) certifying that the pipeline will notify all affected landowners as required in proposed section 157.6(d).

As stated, the Commission currently mails the Notice of Intent to the people on the pipeline's list of potential landowners. Many of the notices are returned as undeliverable. Therefore, as part of the Commission's landowner notification procedure we propose in section 157.6(d)(4) to require that the pipelines make a good-faith effort to determine the correct address for any returned notices and to send notices to the corrected addresses. The pipeline

[5] In a letter to the Chairman of the Commission concerning the INGAA proposal, Senator Thompson supports the provision of the INGAA proposal that the landowners be notified after the application is filed. He states, ''* * * it is absolutely critical not only that the landowners receive this information, but that they receive it in a timely manner * * *''

[6] Iowa Board's comments, at 4.

[7] The executive summary of the study is located on Florida Gas' home page at http://www.fgt.enron.com/mmexecutivesummary.doc.

[8] Both the Duke and Enron representatives stated that they contact potential landowners when they are conducting initial environmental surveys before the application is filed with the Commission.

also would be required to file an updated landowner list with the corrected addresses within 30 days of filing the application as proposed in section 157.6(d)(5). We believe that it will benefit the pipeline to attempt to obtain the correct addresses earlier on in the process. The pipeline will need to have accurate addresses for the necessary landowners to obtain the easements for the project. Therefore, determining the proper address sooner as opposed to later will alleviate any potential delay in obtaining the necessary easements.

As stated, the landowner groups contend that notification after the application is too late because the route has already been determined. We disagree. Although we do require that the pipeline file for the route it proposes to use, the pipeline route frequently is modified during the certificate process. As discussed at the December 9 conference, pipelines do modify their proposal as a result of negotiations with landowners. Additionally, the Commission frequently makes route modifications to accommodate specific landowner or other environmental concerns.

Finally, in section 380.12(c)(5), the Commission is proposing to require that pipelines consult with landowners prior to abandoning facilities and the associated right-of-way or easement to determine if the landowners would prefer to have the facilities removed from their property. The pipeline, in consultation with the landowner, should determine if the pipeline should be abandoned in place or removed. If it determines that it is not practical to honor any requests to remove facilities, it needs to explain why in Resource Report 1.

We propose this requirement because we believe the landowner's opinion should be actively sought in cases where the pipeline is relinquishing all rights to the land it has obtained temporary use of from the landowner. As the pipeline may have no responsibility for the facilities left on such property, we should know whether the landowner would like the land back the way the pipeline found it. We are not requiring the pipeline to automatically agree to the landowner's wishes, because there may be valid reasons to leave the facility in the ground.

2. Affected Landowners

a. *Comments.* INGAA proposes that the pipeline make a good faith effort to notify any person who is the owner of record of real property that may be subject to eminent domain as a result of the project. El Paso states that the Commission should not require that the pipelines do a full title search. INGAA argues that the Commission's ''affected public'' standard is vague and difficult to define. It contends that it might be interpreted to require that the pipeline provide notice to competing pipelines before the application is filed. It recommends that the ''affected landowners'' be defined as ''the individual noted in the most recent county tax records as receiving the tax notice for property that may be subject to eminent domain as a result of approval of the certificate application.'' It states that only landowners directly impacted by either the permanent right-of-way or temporary work spaces should be notified.

Landowner groups recommend that various persons and groups be notified, including the entire community, public officials, landowners, abutters,[9] and local newspapers. Some recommend that all landowners directly affected and nearby owners of land with property lines within one half a mile radius of the pipeline and one mile for strictly agricultural areas be included. Others recommend that the landowners or residents located within 220 yards of proposed right-of-way or all landowners who share common land within 220 yards of proposed right-of-way be notified.

NYPSC requests that the pipelines provide notice to potential properties that may be affected directly or indirectly by the project. For example, it recommends that the pipeline notify owners of property adjacent to or within the range of influence of aboveground or noise producing equipment such as compressor stations, blow-down valves, pig launchers or similar facilities. It also recommends that notice be given to nearby or adjacent property owners where construction will introduce significant visual elements or remove visual buffers. Where the route is uncertain, the Commission should consider notice to all owners of record of potentially-affected property.

Senator Thompson's legislation provided for a: ''good faith effort to provide notice by certified mail to any person who is the owner of record of any interest in property which may be subject to the exercise of eminent domain under [the NGA].''

b. *Commission Response.* In section 157.6(d)(2), the Commission proposes to define affected landowners to include owners of: (1) Property directly affected by the proposed activity, including all property subject to the right-of-way and temporary work space; (2) property abutting an existing right-of-way (owned in fee by a utility) in which the facilities would be constructed; (3) property abutting a compressor or LNG facility; or (4) property over new storage fields or expansion of storage fields and any applicable buffer zone.

We believe that these properties potentially could be significantly impacted by the proposed pipeline projects. Property owners whose property abuts existing rights-of-way should be notified because they may be affected and the Commission would like their input. Property owners abutting a compressor or LNG facility should be notified for the same reason. Finally, property owners over new or expanded storage fields or in buffer zones for these areas should be notified because their property rights may be affected, natural gas may be stored under their property, and facilities might ultimately be constructed on their property.

We note that the Commission will continue to notify state and local government agencies and representative, and additional landowners on a case-by-case basis as necessary as part of its environmental review when the Notice of Intent is issued. Further, the proposed regulations are only a minimum requirement and the pipelines and the Commission can notify any additional landowners as necessary.

3. Notification Contents

a. *Comments.* Senator Thompson's letter to the Commission in response to INGAA's proposal stated that the rulemaking should:

> Include a specific and conspicuous description of the rights of property owners to participate in any proceeding relating to the granting of eminent domain authority and a specific and conspicuous statement of who the property owners may contact at the appropriate federal agency relating to the proceeding.

Other recommendations made by others for information that should be in the notice, included: (1) Information about the pipeline company; (2) a general description of the project, its purpose, and its proposed timetable; (3) when the pipeline intends to file the application; (4) up to date information on the proposed route,[10] construction process and timing, and the type of easement sought; (5) an explanation of

[9] Abutters are owners of properties which share a common boundary with the facility site or the right-of-way.

[10] Including a map of the route. For large projects there should be a map showing the entire route, and another map showing the landowner's local area (such as the county).

the pipeline construction process, including methods and restoration plans; (6) an explanation of the Commission's certificate process, including the rights of landowners to file comments or intervene; (7) details on how to file as an intervening party, an appropriate list of agency contacts and principal parties involved (including pipeline company officials), including phone numbers, addresses, and web addresses, and applicable regulations; (8) a statement that points out that the route is in a preliminary stage and is subject to revisions and adjustments; (9) an explanation of the easement rights the pipeline company will seek to acquire for the project; (10) an explanation about how the company will pay for damages; (11) the Commission's pamphlet ''An interstate natural gas pipeline on my land? What do I need to know?''; (12) a full copy of the application; and (13) an explanation of who the project would benefit and a justification of the end use.

b. *Commission Response.* The Commission proposes that the notice should include: (1) The docket number of the filing; (2) a detailed description of the proposed facilities including specific details of their location, the purpose of the project, and the timing of the project; (3) a description of the applicant; (4) the name of specific contacts at the pipeline where the landowner can obtain additional information about the project; and (5) a location where the applicant has made copies of the application available.[11] Additionally, the notice should either include map(s) of the project or information where detailed map(s) of the project can be viewed or obtained. The pipeline contact should be knowledgeable about the project and should be able to answer specific questions concerning the project.

The notice should also include a copy of the Commission's pamphlet ''An interstate natural gas pipeline on my land? What do I need to know?''. The pamphlet generally explains the Commission's certificate process and addresses the basic concerns of landowners. It includes information on how to get a copy of the pipeline's application and how to participate in the proceeding. It also includes general information on pipeline rights-of-way including, among other things: (1) how the pipeline obtains a right-of-way; (2) the size of the right-of-way and how it is maintained; and (3) building on the right-of-way. The pamphlet explains the responsibilities of the pipeline company. It also discusses safety and environmental issues. Finally, the pamphlet lists the phone number of the Commission's Office of External Affairs which the landowner can contact if there are further questions concerning the certificate process.

B. Landowner Notification Under Sections 157.202 and 2.55 of the Commission's Regulations

In the September 30 notice, the Commission stated that it is considering changes to sections 157.202 and 2.55 of its regulations. Specifically, under section 157.202(b)(2) the Commission is considering expanding the definition of eligible facilities to include injection, withdrawal, and observation wells. Under section 2.55, it is considering allowing the use of additional work space for replacement facilities. However, under both sections the Commission stated that it was concerned about how the pipeline would obtain the landowner's consent before beginning construction.

In general, the landowner groups state that the pipeline should notify the landowners, via certified mail, to obtain their consent any time they plan to enter on the property even if the pipeline has a valid easement. The pipelines generally believe that any additional Commission regulations in this area are unnecessary. They contend that the pipelines must have the necessary property rights before engaging in any construction activities on the landowner's property.

Prior to using any land for any work, the pipelines state that they must have an easement or property rights to use the land. They assert that the agreements with the landowner would: (1) Govern the pipeline's use of the property; (2) determine what type of notice is required; and (3) would detail any compensation that may be due the property owner. If the right to use the property is not controlled by an easement agreement, the pipelines contend that they would have to acquire the appropriate property rights or consent from the landowner prior to commencing any project under automatic authority in order to avoid claims of criminal and trespass charges and to maintain good working relationships with the landowners. Therefore, the pipelines believe that the Commission should provide flexibility to allow each pipeline to implement notification of landowners in a manner best suited to its own landowner situations. They argue the Commission should respect the bargains the pipelines have already negotiated and obtained from the landowners and not impose any additional requirements. Finally, they argue that there is no forum under the blanket certificate where the landowner could raise issues.[12]

b. *Commission Response.* As stated in the September 30 notice, the Commission stated that it was considering expanding the definition of eligible facilities under section 157.202(b) of the regulations to include injection, withdrawal, and observation wells. Upon reconsideration of this issue, the Commission has determined that it is not appropriate for the pipeline to construct new injection and withdrawal wells under its blanket certificate. Such activity would expand upon the authorization granted in the original certificate by increasing the capacity and deliverability of the storage field. We believe such activity is beyond the original intent of the blanket certificate which was to ''enable pipelines to construct relatively minor facilities and undertake relatively routine services without the burden of a case-specific determination.'' [13]

However, we do propose to allow the pipelines to drill observation wells under their blanket certificate. Observation wells generally are needed for the pipelines to adequately monitor their storage fields. Further, they do not change the characteristics of the storage fields and do not result in any significant changes to the underlying certificate authorization. Accordingly, we propose to add a sentence to section 157.202(b)(2)(i) specifically including observation wells as eligible facilities.

We also believe, upon further consideration, that it is premature for the Commission to address expanding the allowed area for additional workspace under section 2.55. Section 2.55 exempts certain activities from NGA section 7 jurisdiction. Acquiring additional land for construction activities is a section 7 activity and, therefore, does not qualify for the section 2.55 exemption.

While we do not intend to expand the definition of eligible facilities to include injection or withdrawal wells or to allow additional work space under section 2.55, we agree with the landowners' request that they be notified of construction to be performed

[11] In new section 157.10, promulgated in RM98–9–000, the pipelines are required to make complete copies of the application available in each county in the project area.

[12] However, we note that the suggested changes were to require landowner notification under these sections, not to notify the Commission.

[13] Interstate Pipeline Certificates for Routine Transactions, Order No. 234–A, 47 FR 38,871 (September 3, 1982) FERC Stats. and Regs. Regulation Preambles 1982–1985 ¶ 30,389, at 30,258 (1982).

under these sections. Accordingly, the Commission intends to add a landowner notification requirement for construction activities conducted under section 2.55 and Subpart F of Part 157 of the Commission's regulations. Under proposed sections 2.55(b) (1)(iv) and 157.203(d)(1), the pipeline will have to notify the affected landowner 30 days prior to commencing construction. The notification should include: (1) a brief description of the facilities to be constructed/replaced and the effect the construction activity will have on the landowner's property; (2) the name and phone number of a company representative that is knowledgeable about the project; and (3) a description of the Commission's Enforcement Hotline procedures explained in section 1b.21 of the Commission's regulations and the Enforcement Hotline phone number.

In the event the landowners have further questions concerning the project, they can contact the company representative for more details. If the landowners need further information concerning the Commission's role in these types of projects, they can contact the Commission's enforcement staff.

The Commission proposes the similar requirements in section 157.203(d)(2) for prior notice filings. Except under 157.203(d)(2), we propose to require that the pipeline notify the affected landowner within three (3) business days after filing the prior notice application with the Commission and to include the docket number in the notice. We also propose that the include the following paragraph in the notice:

> This project is being proposed under the Commission's prior notice requirements of its blanket certificate program. Under the Commission's regulations, you have the right to protest this project within 45 days of the date the Commission issues a notice of the pipeline's filing. If you file a protest, you should include the docket number listed in this letter and provide the specific reasons for your protest. The protest should be mailed to to the Secretary of the Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426. A copy of the protest should be mailed to the pipeline at [pipeline address]. If you have any questions concerning these procedures you can call the Commission's Office of External Affairs at (202) 208–1088.

We note that requiring that the pipeline inform the landowners of their right to protest a prior notice filing when the pipeline constructs facilities under its blanket certificate resolves the Commission's concerns over adding residential areas to its definition of sensitive environmental areas. Accordingly, we do not believe it is necessary to include residential areas in the list of sensitive environmental areas at this time.

C. Mitigation Measures for Blanket Certificates

1. Comments

The Commission also requested comments on the need to apply the same erosion control and stream and wetland crossing mitigation measures to blanket projects as are routinely used in the regular certificate process. Currently, there are no such mitigation measures imposed on blanket construction projects, although the impacts are similar to those encountered in the traditional 7(c) projects. The Commission needs to ensure that the pipelines are following such mitigation measures.

Generally, the pipelines do not object to the Commission's proposal. However, they recommend that the Commission view the mitigation measures as guidelines and not mandate them in all instances. They contend that the Commission should allow the pipelines the flexibility to deviate from the guidelines as appropriate.

National Fuel states that there are problems with the Commission's measures and that the pipelines frequently find it necessary to seek deviations from certain measures to meet the recommendations of state or local agencies or implement appropriate site specific construction procedures.

2. Commission Response

In fulfilling its mandate under NEPA, the Commission routinely requires that pipeline facilities constructed under case-specific NGA section 7 certificates follow some type of erosion control and stream and wetland crossing mitigation measures. We believe that to apply NEPA consistently the Commission should require the same measures be applied to pipeline facilities constructed under the pipeline's blanket certificate. Therefore, we propose to add section 157.206(b)(3)(iv) to the regulations to require that, unless it gets a variance, the pipelines constructing facilities under their blanket certificates adhere to the Commission staff's current ''Upland Erosion Control, Revegetation and Maintenance Plan'' (Plan) and ''Wetland and Waterbody Construction and Mitigation Procedures'' (Procedures). The documents are available on the Commission's Internet home page or from the Commission's staff.

If the pipelines cannot follow the mitigation measures for a particular project or if an agency with responsibility for protecting the relevant resource (soil, wetland, or waterbodies) specifies a measure that conflicts with a measure in the Plan or Procedures, a variance can be obtained. In either case, an alternative measure specified in writing by the appropriate agency may be used. Alternatively, the pipeline can apply to the Director of the Office of Pipeline Regulation to request a waiver of the mitigation measures or permission to apply alternative measures.

D. Magnuson Act

The Magnuson Act requires all Federal agencies to consult with the National Marine Fisheries Service on the effects that their activities may have on ''essential fish habitat.'' The National Marine Fisheries Service's regulations at Chapter 50 Part 600 of the Code of Federal Regulations describe the process that should be followed. We are currently discussing the details of how the Commission can best comply with this act in the long-term, but in the interim, we will simply state that the requirements of this act are important for the companies to consider at the same time they address Endangered Species Act considerations. Companies should be contacting the National Marine Fisheries Service to address what level of consultation is required for their project for appropriate consideration of ''essential fish habitat.'' Accordingly, we propose to add references to the Magnuson Act in both the blanket certificate regulations, at section 157.206(b)(2)(xii), and for case-specific NGA section 7 filings, at section 380.12(e)(5), requiring that pipelines consult with the National Marine Fisheries Service with respect to ''essential fish habitat''.

E. Categorical Exclusions

Section 380.4 of the Commission's regulations lists projects or actions that the Commission has determined normally do not have a significant environmental impact and are, therefore, categorically excluded from the need for an Environmental Assessment. The Commission proposes to add several new categories to the list, including: (1) Abandonment of facilities by sale that only involve minor or no ground disturbance to disconnect the facilities from the system (proposed section 380.4(a)(31)); (2) conversion of facilities from use under the Natural Gas Policy Act to use under the NGA (proposed section 380.4(a)(32)); (3) construction or abandonment of facilities conducted entirely in Federal offshore waters which has been approved by the Minerals Management Service and the Corps of Engineers, as necessary (proposed section

380.4(a)(33)); (4) abandonment or construction of facilities on an existing offshore platform (proposed section 380.4(a)(34)); (5) abandonment, construction, or replacement of a facility (other than compression) solely within an existing building within a natural gas facility (other than LNG facilities), so long as it does not increase the noise or air emissions from the facility, as a whole (proposed section 380.4(a)(35)); and (6) conversion of compression to standby use as long as the compressor is not moved, or abandonment of compression as long as the compressor station remains in operation (proposed section 380.4(a)(36)).

Proposed sections 380.4(a)(31) and (32) involve abandonments or conversions that, at most, involve disturbance in small areas within existing rights-of-way to connect or disconnect existing pipelines. Proposed section 380.4(a)(34) has no effect on the natural environment with the exception of air and noise emissions if compression is involved. Given the fact that these emissions would occur offshore on existing platforms which are isolated and already contain similar activities, we believe there is no significant impact associated with this type of activity.

In section 380.4(a)(33) we are proposing to require that the company receive pre-approval from the Minerals Management Service and the Corps of Engineers that have primary jurisdiction over the construction, operation, and removal of offshore facilities. These Federal agencies have their own procedures for complying with NEPA for the impact potentially involved with these projects. Therefore, we believe there is no reason for the Commission to conduct its own environmental analysis, or to verify that the other agencies did such an analysis.

Proposed section 380.4(a)(35) deals with activities taking place solely within existing structures. The only potential impacts to the environment under this type of activity would be air and noise emissions. Since we propose to require that there be no increase in either type of emission, the only potential is for a reduction and, therefore, an improvement in the natural environment. We do not believe any purpose would be served in conducting an environmental analysis for this kind of activity.

Proposed section 380.4(a)(36) is similar to proposed section 380.4(a)(35). The conversion of compression to standby can only reduce the amount of air and noise emissions from the station. The change to air and noise emissions is a positive effect—the same as it is for the previous category. Abandonment of some of the compression at a station which remains in operation may result in ground disturbance within the compressor station site, but this area was disturbed similarly when the facility was first installed. Therefore, it requires no further Commission analysis.

F. Miscellaneous Rearrangement of Facilities

In the comments filed in Docket No. RM98–9–000, several parties requested that the Commission clarify that miscellaneous rearrangement of facilities under section 157.202(b)(6) of the Commission's regulations includes replacement facilities needed as a result of encroachment on the pipeline because of residential, commercial, or industrial development. Because of the landowner notification issue, the Commission deferred addressing that issue to this proceeding.

Since this rulemaking proposes to require the company to notify landowners of their intent to conduct the rearrangement activity, the landowners would be given the opportunity to express any concerns. This satisfies our landowner participation concern. Accordingly, we propose to add encroachment to section 157.202(b)(6) as an appropriate reason to use the blanket certificate for miscellaneous rearrangement of facilities.

G. Other Issues Raised

1. Special Intervention Status

Many landowner groups claim that the Commission's current intervention process is cost prohibitive and that it deters landowner participation. They request that the Commission streamline its process to accommodate landowners. Specifically, they request that the Commission allow landowners to file one copy of their comment/protest with the Commission and one copy with the company. Also, one landowner recommended that town governments should be viewed as intervenors for citizens and/or that town governments should be viewed automatically as parties.

Under section 385.2010 of the Commission's regulations an intervenor in a proceeding before the Commission must serve a copy of its filing on all parties on the official service list. However, under section 385.101(e) of the Commission's regulations, the Commission may waive a rule for good cause. Parties that have difficulty participating in the proceeding for whatever reason may request a waiver of the Commission's service rule.

2. Depositories of Filing Information

One landowner also requests that the Commission set up depositories where materials are readily available to the general public. In Docket No. RM98–9–000, the Commission intends to allow a limited waiver of the service rules for the filing of voluminous material or difficult to reproduce material. Specifically, the Commission determined that these filings do not need to be served on all parties unless they specifically request a copy. Instead, the Commission is requiring that the pipeline put complete copies of those filings in depositories along the route of the pipeline for public inspection. In addition, new section 157.10, promulgated in RM98–9–000, requires that pipelines make complete copies of the application available in each county in the project area. Finally, all documents filed with the Commission are available on the Commission's Internet home page. Increasingly, people have access to the Internet either in their homes or at the local libraries. Therefore, we believe that the information filed in a certificate proceeding under the Commission's current regulations (as amended in Docket No. RM98–9–000) is sufficiently available to the participating parties.

3. Inspectors of Construction Sites/ Pipeline Safety

a. *Comments.* Central Maine Power Company (Central Maine) states that the Commission presently has no oversight of the actual construction process. It contends that the pipeline construction crews repeatedly violate OSHA clearances and minimum work space requirements when working near power lines. It urges the Commission to modify its regulations so that the safety and electric system reliability concerns are fully addressed throughout the certificate process, and that certificate orders explicitly require compliance with safety requirements with the same degree of specificity as already required for environmental conditions. It believes that the Commission has an obligation to devote necessary resources to insure that the pipeline construction it authorizes does not endanger the public and is not adverse to the public interest in reliable electric service. It requests that the Commission allocate resources to expand substantially the scope of its post-certificate monitoring of the pipeline construction process. Several of the landowner groups also maintain that the Commission should have

inspectors assigned locally to monitor construction sites.

b. *Commission Response.* The Commission does, in fact, conduct oversight inspections of the construction process. As part of the environmental conditions imposed in a certificate proceeding, the Commission requires that the pipeline company hire environmental inspectors to make sure that the environmental conditions of the certificate, including any proposed mitigation, are appropriately applied. In the event landowners have questions or problems during the construction phase or after the facilities are built, they can call the Commission's enforcement staff. We believe these measures allow the Commission to ensure compliance with our environmental conditions.

Central Maine is concerned about our pipeline siting regulations and the construction process. These concerns are outside the scope of this rulemaking, and the safety concerns raised by Central Maine are generally under the purview of the Occupational Safety and Health Administration and the Department of Transportation. While we do favor the use of existing corridors when appropriate, we recognize that cooperation between the companies involved and careful construction practices are key to success.

During our environmental review process we attempt to determine the feasibility of the joint use of rights-of-way and the availability of adequate spacing for a proposed project. We obtain input from both companies before requiring joint use. As stated, we conduct inspections during construction. In the event that trouble arises during the construction phase, we will take steps to avoid inappropriate risks to other utilities or to the public.

4. Eminent Domain

Some of the landowner groups state that in a deregulated industry in which market forces are allowed to determine whether pipelines are constructed, the use of eminent domain to enable construction and operation of natural gas facilities on the private property is inappropriate. They state that landowners become largely uncompensated business partners who receive only a token payment for an easement. They argue that market demand is not the same as public need. They believe that companies in profit making businesses that use other people's properties should be required to acquire that property in the marketplace. They urge the Commission to require a pipeline to acquire a large majority of easements through negotiations before they can seize the remaining property. They claim that the property owners' compensation is offset by the court costs.

The landowner groups assert that the pipeline should be required to negotiate a business deal with landowners instead of relying on the right of eminent domain. They contend that landowners should have the option of being paid royalties for use of their land.

Under the NGA, if the Commission finds that a proposed project is in the public convenience and necessity, the pipeline has the right to acquire the property for that project by eminent domain. The pipeline's right to eminent domain is not optional. Further, case law suggests that the pipeline cannot waive its right to eminent domain.[14] It is a statutory requirement imposed by Congress. The Commission cannot change or modify statutory requirements.

5. Review of Easement Documents

The landowner groups request that the Commission assign a person from the Commission's staff to each area of pipeline construction from the beginning of easement negotiations to assist landowners in land acquisition. They contend that the Commission should assure that pipelines do not try to acquire more than what they are entitled to by the certificate. Additionally, they request that the Commission review all easement agreements to determine if they are consistent with the certificate authorization. They state that the landowner does not want to relinquish more rights than the Commission intended and that the company should not be able to acquire more than the Commission intended. They state that in several recent projects there are discrepancies between the certificate authorization and easement documents/court papers and that they do not have the knowledge or resources to fight the pipeline.

The Commission does not believe it is necessary to review every easement document negotiated by the pipeline or submitted to the court for the condemnation proceeding. However, we expect that the pipelines will negotiate with the landowners fairly and in good faith. We believe the landowners have a right to know the specific area the Commission has authorized the pipeline to take and the specific activities the Commission has authorized for that property before they begin any negotiations for the easement. We note that the pipeline should clearly explain and delineate at the beginning of the negotiations what is specifically covered by the Commission's certificate.

Further, in the future, where landowner issues are a concern, as a condition to a certificate to construct facilities, the Commission may require that the pipeline specifically state in the easement document the specific area that is covered by easement and the phone number and a name of a representative of the pipeline the landowners can call if they have a question concerning the easement agreement.

G. Negotiated Rulemaking

Finally, the Commission stated that it was considering using the negotiated rulemaking process under the Negotiated Rulemaking Act of 1990 as an alternative to traditional rulemaking to promulgate new regulations for its landowner notification policy. Generally, the comments were not in favor of the negotiated rulemaking process. The Iowa Board stated that it found such a process for these types of issues combative and partisan. Others stated that the negotiated rulemaking process was too rigid a structure. However, many supported the use of working groups to address some of the more controversial issues.

The Negotiated Rulemaking Act recommends that an agency consider the feasibility of regulatory negotiations to resolve a specific issue when: (1) There is a need for a rule; (2) there are a limited number of identifiable interests; (3) these interests can be adequately represented by persons willing to negotiate in good faith to reach a consensus; (4) there is a likelihood that the committee will reach consensus within a fixed period of time; (5) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking; (6) the agency has adequate resources and is willing to commit such resources to the process; and (7) the agency is committed to use the result of the negotiation in formulating a proposed rule if at all possible.

Generally, in light of the comments received in this proceeding, it is evident that the Commission can rule on many of the issues based on the written record in this proceeding. For example, all parties are in agreement that earlier notification is necessary. However, the pipelines want notification to be after

[14] *See Georgia* v. *City of Chattanooga,* 264 U.S. 472 (1924); Terminal Shares v. Chicago, B & Q.R. Co., 65 F.Supp. 678, 683 (1946)(finding that the power of eminent domain is conferred upon a railroad ''as one in trust, to be exercised in promoting the public interest.'' ''[It] is not a power owned by a railroad corporation as one of its assets, that it may barter about and pass as a consideration in contracts and agreements.'')

the application is filed. The landowner groups want to be notified earlier to participate in the siting process. It is doubtful that any further negotiations would produce a consensus on this issue and it will probably create an unnecessary delay. Additionally, there is very little controversy over how the notice should be delivered and what should be included in the notice. While other issues, for example, who should be included in the group notified and whether the Commission should designate residential areas as sensitive environmental areas, may merit further public discussion, forming a negotiated rulemaking committee on the basis of those issues alone would likely delay implementation of new notification regulations that are clearly needed now. In the event, after the Commission issues this NOPR, it is determined that certain issues may benefit from further public discussion, the Commission may hold additional technical conferences to discuss those issues.

IV. Information Collection Statement

The proposed rule, if adopted, would establish new reporting requirements and modify existing reporting requirements under 18 CFR Parts 2.55, 153, 157, and 380 of the Commission's Regulations. The information requirements proposed in the subject rulemaking would affect, and become part of, the data requirements under the Commission's FERC–537 [15] and FERC–577 [16] data collections. Specifically, the subject rule would require notification of all landowners whose land may be affected by proposed natural gas pipeline projects.

In accordance with Section 3507(d) of the Paperwork Reduction Act of 1995,[17] the proposed data requirements in the subject rulemaking are being submitted to the Office of Management and Budget (OMB) for review.

The estimated reporting burden related to the notification requirements proposed herein is shown in the tables below. The estimates include an initial one-time start-up burden of 8,800 hours for the first year plus an on-going annual burden of 7,284 hours under FERC–577 and a decrease of 12,600 hours under FERC–537. The net change in total reporting burden under the data collections would be an estimated net increase of 3,484 hours for the first year. In subsequent years, there would be a net decrease of 5,316 hours.

To consider the impact on the persons affected by this rulemaking, comments are solicited on the need for this notice requirement, whether the information/notice will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information requirements, and any suggested methods for minimizing respondent's burden, including the use of automated information techniques. The Commission would like specific comments on the impact of this rule on individual natural gas companies. Both estimates of current burden and impact should be in work hours and dollar costs in sufficient detail to demonstrate methodology and assumptions.

The burden estimates for complying with this proposed rule are as follows:

Public Reporting Burden: Estimated Annual Burden: The burden estimates for complying with this proposed rule are as follows:

Data collection	Number. of respondents	Number of responses	Hours per response	Total annual hours
FERC–537	50	−50	252	−12,600
FERC–577	70	−20	[18] +13.9	[19] +16,084
Total	70	−70	[20] +2.1	+3,484

[18] The increase per response based on an estimated 1,160 responses per year. *Note:* Detail may not add to total because of rounding.
[19] Includes one-time initial start-up burden of 8,800 hours.
[20] Represents the increase per response (rounded) based on the net increase in total reporting burden (3,484 hours) divided by the total number of responses expected annually under both FERC–537 and FERC–577 (1,690 responses).

Total Annual Hours for Collections

Annual reporting burden (including one-time start-up burden during the first year of implementation) plus record keeping (if appropriate)=3,484 hours.

Based on the Commission's experience with processing applications for construction and acquisition of pipeline facilities over the last three fiscal years (FY96–FY98), it is estimated that 1,690 filings/responses per year (under both data collections) will be made over the next three years. The average burden per filing would increase 2.1 hours; the average burden per respondent would increase 49.8 hours. Following the first year of implementation, the reporting burden under FERC–577 would be reduced by 8,800 hours.

Information Collection costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents during the first year of implementation to be:

Data collection	Annualized capital/start-up costs	Annualized on-going costs (operations and maintenance)	Total annualized costs
FERC–537	0	−$665,674	−$665,674
FERC–577	$464,915	384,823	849,738
Total	464,915	−280,851	184,064

[15] Gas Pipeline Certificates: Construction, Acquisition, and Abandonment.

[16] Gas Pipeline Certificates: Environmental Impact Statement.

[17] 44 U.S.C. 3507(d).

OMB regulations require its approval of certain information collection requirements imposed by agency rule.[21] Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC–537 ''Gas Pipeline Certificate: Construction, Acquisition, and Abandonment.'' and FERC–577 ''Environmental Impact Statement.''

Action: Proposed Data Collections.

OMB Control No.: 1902–0060 (FERC–537); 1902–0128 (FERC–577).

Applicants shall not be penalized for failure to respond to these collections of information unless the collections of information display a valid OMB control number. The notice requirements proposed in the subject rule would be mandatory if adopted by the Commission in a Final Rule.

Respondents: Businesses or other for profit. (Interstate natural gas pipelines (Not applicable to small business))

Frequency of Responses: On occasion.

Necessity of Information: The proposed rule revises the Commission's regulations governing the filing of applications for the construction and operation of pipeline facilities to provide service or to abandon facilities or service under section 7 of the NGA. Section 7 of the NGA requires the Commission to issue certificates of public convenience and necessity for all interstate sales and transportation of natural gas, the construction and operation of natural gas facilities used for those interstate sales and transportation and prior Commission approval of abandonment of jurisdictional facilities or services. The Commission has determined that portions of its regulations need to be revised to reflect a recent increase in sensitivity of the public to pipeline construction, and a desire on the part of the public to receive more timely notification of pipeline construction proposals. Certain other changes are being made because of the Commission's experience in the processing of some applications for which an environmental assessment is unnecessary.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

For information on the requirements, submitting comments concerning the collection of information and the associated burden estimates, including suggestions for reducing this burden, please send your comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 273–0873, e-mail: mike.miller@ferc.fed.us]. In addition, comments on reducing the burden and/or improving the collections of information should also be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW, Washington, D.C. 20503, phone (202) 395–3087, fax: (202) 395–7285.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[22] The Commission is not required to make such analyses if a rule would not have such an effect.[23]

The Commission does not believe that this rule would have such an impact on small entities. The regulations adopted here impose requirements only on interstate pipelines, which are not small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VI. Environmental Statement

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[24] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[25] Generally, the actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[26] While the additions of the categorical exclusion in proposed sections 380.4(a)(31) through (36) include construction-type activities, the above section that discusses those sections explains why they do not have a significant effect on the environment. Accordingly, we do not believe that any further analysis is needed. Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VII. Public Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m., June 21, 1999. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426 and should refer to Docket No. RM98–17–000.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 6.1 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM98–17–000; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to ''comment.rm@ferc.fed.us'' in the following format. On the subject line, specify Docket No. RM98–17–000. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

[21] 5 CFR 1320.11 (1997).

[22] 5 U.S.C. 601–612 (1988).

[23] 5 U.S.C. 605(b)(1988).

[24] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[25] 18 CFR 380.4.

[26] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, NE, Washington DC 20426, during regular business hours. Additionally, comments may be viewed and printed remotely via the Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 380

Environmental impact statements, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 2, 153, 157, and 380 Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

§ 2.55 [Amended]

2. In § 2.55, paragraph (b)(1)(ii) is revised and new paragraphs (b)(1)(iii) and (iv) are added to read as follows:

* * * * *

(b) * * *

(1) * * *

(ii) The replacement facilities will have a substantially equivalent designed delivery capacity, will be located in the same right-of-way or on the same site as the facilities being replaced, and will be constructed using the temporary work space used to construct the original facility as determined by the guidelines in Appendix A of this Part;

(iii) Except as described in paragraph (b)(2) of this section, the company will file notification of such activity with the Commission at least 30 days prior to commencing construction; and

(iv) The company will notify the affected landowner 30 days prior to commencing construction. The notification shall include:

(A) A brief description of the facilities to be replaced and the effect the construction activity will have on the landowner's property;

(B) The name and phone number of a company representative that is knowledgeable about the project; and

(C) An explanation of the Commission's Enforcement Hotline procedures, as codified in section 1b.21 of this chapter, and the Enforcement Hotline phone number.

* * * * *

PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR OF IMPORT NATURAL GAS

3. The authority citation for Part 153 continues to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p.136.

4. New section 153.3 is added to read as follows:

§ 153.3 Notice requirements.

All applications filed under this part are subject to the landowner notification requirements in § 157.6 of this chapter.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

5. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

Subpart A—Applications for Certificates of Public Convenience and Necessity and for Orders Permitting and Approving Abandonment Under Section 7 of the Natural Gas Act, as Amended, Concerning Any Operation, Sales, Service, Construction, Extension, Acquisition or Abandonment

6. In § 157.6, a new paragraph (d) is added to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

(d) *Landowner notification.* (1) For all applications filed under this subpart, the applicant shall notify all affected landowners by certified or first class mail, within 3 business days following the date that it files an application of its intent to construct or abandon facilities.

(2) *All affected landowners* includes owners of real property, as noted in the most recent county/city tax records as receiving the tax notice, whose property:

(i) Is directly affected by the proposed activity, including all facility sites, rights-of-way, and temporary workspace;

(ii) Abuts an existing right-of-way or facility site owned in fee by any utility company, in which the facilities would be constructed;

(iii) Abuts the facility site for compressor or LNG facilities; or

(iv) Is within the area of new storage fields or expansions of storage fields and any applicable buffer zone.

(3) The notice shall include:

(i) The docket number of the filing;

(ii) The most recent edition of the Commission's pamphlet that explains the Commission's certificate process and addresses the basic concerns of landowners.

(iii) A description of the applicant and the proposed project, its location, its purpose, and the timing of the project;

(iv) A description of how the landowner may contact the applicant, including a local or toll-free phone number and a name of a specific person to contact who is knowledgeable about the project; and

(v) Information on how the landowner can get a copy of the application from the company or the location(s) where a copy of the application may be found as specified in § 157.10.

(4) If the notice is returned as undeliverable, the applicant will make a reasonable attempt to find the correct address and notify the landowner.

(5) Within 30 days of the date the application was filed, applicant shall

file an updated list of affected landowners, including information concerning notices that were returned undeliverable.

7. In § 157.103, a new paragraph (k) is added to read as follows:

§ 157.103 Terms and conditions; other requirements.

* * * * *

(k) Applications filed under this section are subject to the landowner notification requirements described in § 157.6(d).

8. In § 157.202, a sentence is added to the end of paragraph (b)(2)(i), paragraph (b)(6)(ii) is revised, and paragraph (b)(11)(i) is revised to read as follows:

§ 157.202 Definitions.

* * * * *

(b) * * *

(2)(i) * * * Eligible facility includes observation wells.

* * * * *

(6) * * *

(ii) When required by highway construction, dam construction, encroachment of residential, commercial, or industrial areas, erosion, or the expansion or change of course of rivers, streams or creeks, or

* * * * *

(11) Sensitive environmental area means:

(i) The habitats of species which have been identified as endangered or threatened under the Endangered Species Act (Pub. L. 93–205, as amended) and essential fish habitat as identified under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*);

* * * * *

9. In § 157.203, new paragraph (d) is added to read as follows:

§ 157.203 Blanket certification.

* * * * *

(d) *Landowner notification.* (1) No activity described in § 157.203(b) is authorized unless the company notifies all affected landowners, as defined in § 157.6(d)(2), at least 30 days prior to commencing construction. The notification shall include:

(i) A brief description of the facilities to be constructed or replaced and the effect the construction activity will have on the landowner's property;

(ii) The name and phone number of a company representative who is knowledgeable about the project; and

(iii) An explanation of the Commission's Enforcement Hotline procedures, as codified in section 1b.21 of this chapter, and the Enforcement Hotline telephone number.

(2) For activities described in § 157.203(c) the company shall notify all affected landowners, as defined in § 157.6(d)(2), within three business days of filing its application. The notice should include:

(i) A brief description of the facilities to be constructed or replaced and the effect the construction activity will have on the landowner's property;

(ii) The name and phone number of a company representative that is knowledgeable about the project;

(iii) The docket number assigned to the company's application; and

(iv) The following paragraph: This project is being proposed under the prior notice requirements of the blanket certificate program administered by the Federal Energy Regulatory Commission. Under the Commission's regulations, you have the right to protest this project within 45 days of the date the Commission issues a notice of the pipeline's filing. If you file a protest, you should include the docket number listed in this letter and provide the specific reasons for your protest. The protest should be mailed to the Secretary of the Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426. A copy of the protest should be mailed to the pipeline at [pipeline address]. If you have any questions concerning these procedures you can call the Commission's Office of External Affairs at (202) 208–1088.

10. In § 157.206, new paragraphs (b)(2)(xii), (b)(3)(iv) and (b)(8) are added to read as follows:

§ 157.206 Standard conditions.

* * * * *

(b) Environmental compliance. * * *

(2) * * *

(xii) Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*)

(3) * * *

(iv) Paragraphs (b)(2)(i) and (viii) of this section only if it adheres to Commission staff's current ''Upland Erosion Control, Revegetation and Maintenance Plan'' and ''Wetland and Waterbody Construction and Mitigation Procedures'' which are available on the Commission Internet home page or from the Commission staff, or gets written approval from the staff or the appropriate Federal or state agency for the use of project-specific alternatives to clearly identified portions of those documents.

* * * * *

(8) The certificate holder shall notify the affected landowners of the project at least 30 days prior to the beginning of construction for automatically authorized activities, or within 3 business days of filing the prior notice, as specified in §§ 157.203(d).

* * * * *

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

11. The authority citation for Part 380 continues to read as follows:

Authority: National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370a; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

12. In § 380.4(a), new paragraphs (31) through (36) are added to read as follows:

§ 380.4 Projects or actions categorically excluded

(a) * * *

* * * * *

(31) Abandonment of facilities by sale that involves only minor or no ground disturbance to disconnect the facilities from the system;

(32) Conversion of facilities from use under the NAPA to use under the NGA;

(33) Construction or abandonment of facilities constructed entirely in Federal offshore waters that has been approved by the Minerals Management Service and the Corps of Engineers, as necessary;

(34) Abandonment or construction of facilities on an existing offshore platform;

(35) Abandonment, construction or replacement of a facility (other than compression) solely within an existing building within a natural gas facility (other than LNG facilities), if it does not increase the noise or air emissions from the facility, as a whole; and

(36) Conversion of compression to standby use if the compressor is not moved, or abandonment of compression if the compressor station remains in operation.

13. In § 380.12, paragraph (c)(5) is revised; paragraph (c)(10) is revised; and the first two sentences of (e)(5) are revised to read as follows:

§ 380.12 Environmental reports for Natural Gas Act applications.

* * * * *

(c) * * *

(5)(i) Identify facilities to be abandoned, and state how they would be abandoned, how the site would be restored, who would own the site or right-of-way after abandonment, and who would be responsible for any facilities abandoned in place.

(ii) When the right-of-way or the easement would be abandoned, identify whether landowners were given the

opportunity to request that the facilities on their property, including foundations and below ground components, be removed. Identify any landowners whose preferences the company does not intend to honor, and the reasons therefore.

* * * * *

(10) Provide the names and mailing addresses of all affected landowners specified in § 157.6(d) and certify that all affected landowners will be notified as required in § 157.6(d).

* * * * *

(e) * * *

(5) Identify all federally listed or proposed threatened or endangered species and critical habitat and federally listed essential fish habitat that potentially occur in the vicinity of the project. Discuss the results of the consultation requirements listed in § 380.13(b) at least through § 380.13(b)(5)(i) for endangered or threatened species and with the National Marine Fisheries Service for essential fish habitat, and include any written correspondence that resulted from the consultation. * * *

* * * * *

14. In Appendix A to Part 380, the descriptions of Resource Reports 1 and 3 are revised to read as follows:

Appendix A to Part 380–Minimum Filing Requirements for Environmental Reports Under the Natural Gas Act

Resource Report 1—General Project Description

1. Provide a detailed description and location map of the project facilities. (§ 380.12(c)(1))

2. Describe any nonjurisdictional facilities that would be built in association with the project. (§ 380.12(c)(2))

3. Provide current original U.S. Geological Survey (USGS) 7.5-minute-series topographic maps with mileposts showing the project facilities; (§ 380.12(c)(3))

4. Provide aerial images or photographs or alignment sheets based on these sources with mileposts showing the project facilities; (§ 380.12(c)(3))

5. Provide plot/site plans of compressor stations showing the location of the nearest noise-sensitive areas (NSAs) within 1 mile. (§ 380.12(c)(3,4))

6. Describe construction and restoration methods. (§ 380.12(c)(6))

7. Identify the permits required for construction across surface waters. (§ 380.12(c)(9))

8. Provide the names and address of all affected landowners and certify that all affected landowners will be notified as required in § 157.6(d). (§ 380.12(a)(4) and (c)(10))

* * * * *

Resource Report 3—Vegetation and Wildlife

1. Classify the fishery type of each surface waterbody that would be crossed, including fisheries of special concern. (§ 380.12(e)(1))

2. Describe terrestrial and wetland wildlife and habitats that would be affected by the project. (§ 380.12(e)(2))

3. Describe the major vegetative cover types that would be crossed and provide the acreage of each vegetative cover type that would be affected by construction. (§ 380.12(e)(3))

4. Describe the effects of construction and operation procedures on the fishery resources and proposed mitigation measures. (§ 380.12(e)(4))

5. Evaluate the potential for short-term, long-term, and permanent impact on the wildlife resources and state-listed endangered or threatened species caused by construction and operation of the project and proposed mitigation measures. (§ 380.12(e)(4))

6. Identify all federally listed or proposed endangered or threatened species and federally listed essential fish habitat that potentially occur in the vicinity of the project and discussion results of consultations with other agencies. (§ 380.12(e)(5))

7. Describe any significant biological resources that would be affected. Describe impact and any mitigation proposed to avoid or minimize that impact. (§ 380.12(e)(4 & 6))

* * * * *

[FR Doc. 99–11215 Filed 5–20–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105312–98]

RIN 1545–AW72

Reporting of Gross Proceeds Payments to Attorneys

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the reporting of payments of gross proceeds to attorneys. The regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The regulations will affect attorneys who receive payments of gross proceeds on behalf of their clients, and certain payors (defendants in lawsuits and their insurance companies and agents) that in the course of their trades or businesses make payments to these attorneys. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by August 19, 1999. Outlines of topics to be discussed at the public hearing scheduled for September 22, 1999, at 10 a.m., must be received by September 1, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–105312–98), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–105312–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax__regs/regslist.html. The public hearing will be held in the IRS Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, A. Katharine Jacob Kiss at (202) 622–4920; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Michael Slaughter at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by July 20, 1999. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.6045–5(a). This information is required by the IRS to implement section 1021 of the Taxpayer Relief Act of 1997. This information will be used to verify compliance with section 6045 and to determine that the taxable amount of these payments has been computed correctly. The collection of information is mandatory. The likely respondents are businesses and other for profit institutions.

Respondent taxpayers (payors) provide the information by completing one Form 1099–MISC, Miscellaneous Income, for each attorney who has received one or more payments of gross proceeds from the payor during the calendar year. The burden for this requirement is reflected in the burden estimate for Form 1099–MISC. The estimated burden of information collection for the 1999 Form 1099–MISC is 14 minutes per return.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 6045 of the Internal Revenue Code. A new reporting requirement, section 6045(f), was added to the Code by section 1021 of the Taxpayer Relief Act of 1997 (1997 Act) (Pub. L. 105–34, 111 Stat. 922). Section 6045(f) provides for information reporting for payments of gross proceeds made in the course of a trade or business to attorneys in connection with legal services (whether or not the services are performed for the payor). No information return is required under section 6045(f) for the portion of any payment that is required to be reported under section 6041(a) (or that would be required except for the $600 limitation) or under section 6051 (employee compensation). The 1997 Act also provides that the general exception for reporting to corporations in § 1.6041–3(c) does not apply to corporations providing legal services.

Explanation of Provisions

The proposed regulations take into account comments made by, among others, insurance companies and other payors, the American Bar Association, and the members of the Commissioner's Information Reporting Program Advisory Committee (IRPAC). The operation of section 6045(f) was the subject of a paper presented at the IRPAC meeting held in Washington, DC., on October 28 and 29, 1997, and comments were also received at that meeting.

The proposed regulations clarify that there is no threshold amount below which reporting under section 6045(f) is not required. Additionally, payments made to corporations engaged in providing legal services are reportable.

Several commentators asked whether reporting under section 6045(f) relieves the payor of all other reporting obligations by shifting the reporting obligations to the attorney. The proposed regulations do not adopt this approach. Section 6045 imposes an additional reporting requirement on payors and does not relieve them of any other pre-existing or concurrently existing reporting requirement. The exception in section 6045(f)(2)(B) is limited to situations in which the amount of the attorney fee is already reportable to the attorney as income or wages. The legislative history clearly supports this determination. See, H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. 546 (1997) and Joint Committee on Taxation Staff, *General Explanation of Tax Legislation Enacted in 1997*, 105th Cong., 1st Sess. 214–15 (1997).

Several commentators stated that in certain situations, a gross proceeds payment is delivered to the attorney, but the attorney is not listed as a payee on the check. In some instances this results from the operation of local law; in other instances, attorneys request that their names not appear on the check. The proposed regulations provide that when a payment is delivered to an attorney, even if that attorney is not listed as a payee, the payor is required to file an information return under section 6045(f).

Wherever possible, however, the proposed regulations provide exceptions to the reporting requirement. For example, the proposed regulations provide for a rule of administrative convenience if multiple attorneys are listed as payees. Generally, in those situations, the payor is only required to report on the attorney who receives the payment. The IRS and Treasury Department continue to welcome comments on whether additional exceptions to the reporting requirement are appropriate.

Many commentators suggested that Form 1099–B is not the best form for reporting under section 6045(f). The proposed regulations provide that the information return is made on Form 1099–MISC.

Several commentators asked the IRS to define legal services. Some commentators requested a narrow definition that would exclude any services that did not require that the provider be an attorney, e.g., property or financial management services. However, those commentators also stated that the attorney would most likely be collecting a fee for rendering those services. The IRS and Treasury Department have proposed a broad definition of legal services that includes any services performed by or under the supervision of an attorney.

One commentator asked whether the attorney's TIN must be certified. The proposed regulations provide that, consistent with the general rule under sections 6045 and 6041, the attorney's TIN need not be certified.

The proposed regulations clarify that payments of gross proceeds are subject to backup withholding if the attorney does not provide a TIN. This is consistent with the legislative history that provides:

> Third, attorneys are required to promptly supply their TINS to persons required to file these information reports, pursuant to section 6109. Failure to do so could result in the attorney being subject to penalty under section 6723 and the payments being subject to backup withholding under section 3406.

H.R. Conf. Rep. No. 220, at 546 (1997).

Finally, all of the examples in the proposed regulations follow the generally well-established principle of tax law that the income portion of a plaintiff's settlement is not reportable net of the attorneys fees. But, *cf.*, Rev. Rul. 80–364, 1980–2 C.B. 294 (Situation 3 holding that the attorney's fees portion of the settlement is a reimbursement for expenses incurred by the union to enforce the collective bargaining agreement and not includible in the gross income of the individual employees), and *Davis* v. *Commissioner*,

T.C.M. 1998–248 (following *Cotnam* v. *Commissioner,* 263 F.2d 119 (5th Cir. 1959) for determinations under Alabama law).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the facts that: (1) the time required to prepare and file a Form 1099–MISC is minimal (currently estimated at 14 minutes per form); and (2) it is not anticipated that, as a result of these regulations, small entities will have to prepare and file more than a few, at most, forms per year. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 22, 1999, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and 8 copies) by September 1, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these proposed regulations is A. Katharine Jacob Kiss, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6041–3, effective on January 1, 2000, is amended by revising the first sentence of paragraph (q)(1) to read as follows:

§ 1.6041–3 Payments for which no return of information is required under section 6041.

* * * * *

(q) * * *

(1) A corporation described in § 1.6049–4(c)(1)(ii)(A), except a corporation engaged in providing legal services, and except a corporation engaged in providing medical and health care services or engaged in the billing and collecting of payments in respect to the providing of medical and health care services. * * *

* * * * *

Par. 3. Section 1.6041–3, currently in effect as of May 21, 1999, is amended by revising the introductory text of paragraph (c) to read as follows:

§ 1.6041–3 Payments for which no return of information is required under section 6041.

* * * * *

(c) Payments to a corporation, except payments made after December 31, 1997, to a corporation engaged in providing legal services, and except payments made after December 31, 1970, to a corporation engaged in providing medical and health care services or engaged in the billing and collecting of payments in respect to the providing of medical and health care services, other than payments to—

* * * * *

Par. 4. Section 1.6045–5 is added to read as follows:

§ 1.6045–5 Information reporting on payments to attorneys.

(a) *Requirement of reporting*—(1) *In general.* A person engaged in a trade or business that makes a payment in the course of that trade or business to an attorney in connection with legal services (whether or not the services were performed for the payor) must, except as provided in paragraph (c) of this section, file an information return on Form 1099–MISC, ''Miscellaneous Income'', with the Internal Revenue Service for the calendar year in which the payment is made. For the time and place of filing Form 1099–MISC, see § 1.6041–6. The requirements of this paragraph (a)(1) apply whether or not—

(i) Payments to the attorney aggregate less than $600 for the calendar year;

(ii) A portion of a payment is kept by the attorney as compensation for legal services rendered; or

(iii) Other information returns are required with respect to some or all of a payment under other applicable provisions of the Internal Revenue Code and the regulations thereunder.

(2) *Information required.* The information return required under paragraph (a)(1) of this section must include the following information:

(i) The name, address, and taxpayer identification number (TIN) (as defined in section 7701(a)) of the person making the payment.

(ii) The name, address, and TIN of the attorney to whom the payment was made.

(iii) The aggregate amount of payments for the calendar year.

(iv) Any other information required by Form 1099–MISC and its instructions.

(3) *Requirement to furnish statement.* A person required to file an information return under paragraph (a)(1) of this section must furnish to the attorney a written statement of the information required to be shown on the return. This

requirement may be met by furnishing a copy of the return to the attorney. The written statement must be furnished to the attorney on or before January 31 of the year following the year in which the payment was made.

(b) *Special rules*—(1) *Check delivered to non-payee attorney.* If a check is delivered to an attorney who is not a payee, an information return must be filed under paragraph (a)(1) of this section with respect to the attorney if, under the circumstances, it is reasonable for the payor to believe that the attorney is receiving the check in connection with legal services.

(2) *Joint or multiple payees*—(i) *Check delivered to attorney.* If more than one attorney is listed as a payee on a check, an information return must be filed under paragraph (a)(1) of this section with respect to the attorney who received the check.

(ii) *Check delivered to non-attorney.* If a check has attorney and non-attorney payees and the check is delivered to a non-attorney, an information return must be filed under paragraph (a)(1) of this section with respect to the first listed attorney.

(3) *Attorney required to report payments made to the other attorneys.* An attorney with respect to whom an information return is filed under paragraph (b)(1) or (2) of this section must file information returns, as required under this section, for payments the attorney makes to any other attorneys.

(c) *Exceptions.* A return of information is not required under paragraph (a)(1) of this section with respect to the following payments:

(1) Payments of wages or other compensation paid to an attorney by the attorney's employer.

(2) Payments of compensation or profits paid or distributed to its individual partner by a partnership engaged in providing legal services.

(3) Payments of dividends or corporate earnings and profits paid to its shareholder by a corporation engaged in providing legal services.

(4) Payments of income to an attorney of a fixed or determinable amount required to be reported (or payments that would be required to be reported were it not for failing to meet the dollar amount limitation contained in section 6041(a)) pursuant to section 6041(a) and § 1.6041–1(a).

(5) Payments of the balance of the gross proceeds made to an attorney if a payment described in paragraph (c)(4) of this section is made.

(6) Payments made to a foreign attorney, if the foreign attorney can clearly demonstrate that the attorney is not subject to U.S. tax.

(d) *Definitions.* The following definitions apply for purposes of this section:

(1) *Attorney* means a person engaged in the practice of law, whether as a sole proprietor, partnership, corporation, or joint venture.

(2) *Legal services* means all services performed by, or under the supervision of, an attorney.

(e) *Attorney to furnish TIN.* A payor that is required to make an information return under this section must solicit a TIN from the attorney at or before the time the payor pays gross proceeds to the attorney. Any attorney whose TIN is solicited must furnish the TIN to the payor, but is not required to certify that the TIN is correct. Except as otherwise provided under section 3406, if the attorney does not furnish the attorney's TIN, the payment is subject to backup withholding.

(f) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. A, a plaintiff in a suit for lost wages against T, is represented by attorney B. A settles her suit for $300,000. Payment is made by a check payable jointly to A and B. T does not know the amount of the attorney fee. B retains $100,000 and disburses the remaining $200,000 net proceeds to A. T must file a Form W–2 for $300,000 with respect to A under section 6051. T must also file a Form 1099–MISC with respect to B for $300,000 (see paragraph (a)(1)(iii) of this section).

Example 2. The facts are the same as in *Example 1*, except that T knows that the attorney fee is one-third of the settlement amount, or $100,000. T must file a Form W–2 for $300,000 with respect to A under section 6051. T must also file a Form 1099–MISC with respect to B for $100,000 under section 6041. T is not required to file an information return with respect to B for $200,000 (the balance of the gross proceeds) because of the exception provided in paragraph (c)(5) of this section.

Example 3. C, a plaintiff in a suit for physical personal injury against V, is represented by attorney D. C settles his suit for damages that are excludable from C's gross income under section 104(a)(2). The settlement check is payable jointly to C and D. V does not know the amount of the attorney fee. V must file a return of information with respect to D under paragraph (a)(1) of this section. V is not required to file a return of information with respect to C under section 6041 because the settlement amount is excludable from C's income under section 104(a)(2).

Example 4. W, a defendant in a suit for wrongful injury, knows that D, the plaintiff, has been represented by attorney E throughout the proceeding. State O, where the suit is brought, mandates that certain benefits and settlement awards be made payable to the claimant only. W makes a check payable solely to D and delivers the payment to E's office. W has made a payment to an attorney (see paragraph (b)(1) of this section) and must file a return of information under paragraph (a) of this section.

Example 5. X, a defendant in a suit for lost wages, reasonably believes that F, the plaintiff, has been represented by attorney G throughout the proceeding as evidenced by filings and correspondence signed by G. X makes a check for damages payable solely to F and delivers it to G's office. X has made a payment to an attorney (see paragraph (b)(1) of this section) and must file a return of information under paragraph (a) of this section.

Example 6. Y, a defendant in a suit, makes a payment of the gross proceeds of the amount awarded under the suit to the plaintiff's attorneys, H, I, and J. H, I, and J are not related parties. The payment is delivered to J's office. J deposits the monies into her trust account and pays H and I their respective shares. Y must file a return of information with respect to J (see paragraph (b)(2)(i) of this section). J must file a return of information with respect to H and I (see paragraph (b)(3) of this section).

(g) *Cross reference to penalties.* See the following sections regarding penalties for failure to comply with the requirements of section 6045(f) and this section:

(1) Section 6721 for failure to file a correct information return.

(2) Section 6722 for failure to furnish a correct payee statement.

(3) Section 6723 for failure to comply with other information reporting requirements (including the requirement to furnish a TIN).

(4) Section 7203 for willful failure to supply information (including a taxpayer identification number).

(h) *Effective date.* The rules in this section apply to payments made after December 31, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–12662 Filed 5–20–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AJ07

Medication Prescribing Authority

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws our proposal to amend our medical regulations concerning the prescribing of medications which was published in the **Federal Register** on May 4, 1999 (64 FR 23812). We proposed to change the regulations by stating that health care

professionals, other than physicians, are able to prescribe medications as authorized by VA and to conduct the necessary medication reviews. We also proposed to amend the regulations to allow for VA health care professionals to issue prescriptions by electronic means in addition to ordering prescriptions by telephone. We have decided that we should reconsider issues raised in the proposal and intend to publish a new proposal with clarifications.

FOR FURTHER INFORMATION CONTACT: Thomas V. Holohan, M.D., FACP, Chief Patient Care Services Officer (11), Veterans Health Administration, 202–273–8474. (This is not a toll-free number.)

Approved: May 17, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 99–12880 Filed 5–20–99; 8:45 am]

BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY–9917; IN92–1; FRL–6346–3]

Clean Air Act Reclassification or Extension of Attainment Date, Kentucky and Indiana; Louisville Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to find that the Louisville moderate ozone nonattainment area (Louisville area) has failed to attain the one-hour ozone National Ambient Air Quality Standard (NAAQS) by its applicable attainment date. If EPA takes final action on this finding, the Louisville area would be reclassified as a serious nonattainment area. The Louisville area consists of Jefferson County and portions of Bullitt and Oldham Counties in Kentucky, and Clark and Floyd Counties in Indiana.

However, EPA is also proposing to extend the Louisville area's attainment date, if Kentucky and Indiana meet the criteria of EPA's July 16, 1998 attainment date extension policy. The extension policy provides that a nonattainment area, such as the Louisville area, may be eligible for an attainment date extension if it meets certain conditions. The extension policy applies where pollution from upwind areas interferes with the ability of a downwind area to demonstrate attainment with the one-hour ozone standard by the dates prescribed in the CAA. Kentucky and Indiana are working together to comply with the conditions for receiving an extension. If Kentucky and Indiana make submittals in response to the extension policy, EPA will address the adequacy of those submittals in a subsequent supplemental proposal. If the submittals meet the criteria for an extension, the attainment date for the Louisville area will be extended, and the area will not be reclassified. EPA does not intend to take final action on reclassification of the Louisville area prior to allowing the area an opportunity to qualify for an attainment date extension under the extension policy.

DATES: Comments must be received on or before June 21, 1999.

ADDRESSES: All comments should be addressed to: Kay Prince, Section Chief, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, GA, 30303; or to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604.

Copies of the Louisville area monitored air quality data analyses, guidance on extension of attainment dates in downwind transport areas, state submittals requesting attainment date extension, and other relevant documents used in support of this proposal are available at the following addresses for inspection during normal business hours: U.S. Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, Atlanta, GA, 30303; U.S. Environmental Protection Agency, Region 5, Air Programs Branch, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, IL 60604; and the U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Kay Prince, EPA Region 4, (404) 562–9026, Karla McCorkle, EPA Region 4, (404) 562–9043, or Jay Bortzer, EPA Region 5, (312) 886–1430.

SUPPLEMENTARY INFORMATION: The supplemental information is organized in the following order:

I. What Action Is Being Taken in This Document?

EPA is proposing to find that the Louisville area has failed to attain the one-hour ozone NAAQS by the November 15, 1996, attainment deadline prescribed under the CAA for moderate ozone nonattainment areas, or by the November 15, 1997 extended deadline granted to the Louisville area under Section 181 (a)(5) of the CAA. EPA's authority to make this finding is discussed under section 181(b)(2) of the CAA. Section 181(b)(2) explains EPA's responsibility to determine whether an area has attained the one-hour ozone standard, and its duty to reclassify the area if necessary. If EPA finalizes this finding, the Louisville area will be reclassified by operation of law from moderate nonattainment to serious nonattainment.

Alternatively, EPA is also proposing to extend the Louisville area's attainment date, provided that Kentucky and Indiana submit State Implementation Plans (SIPs) pursuant to EPA's July 16, 1998 policy, entitled ''Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas'' (Richard D. Wilson, Acting Assistant Administrator for Air and Radiation) by November 15, 1999. If the States meet the extension policy criteria and EPA proposes to approve the States' submittals, then a specific extended attainment date will be proposed in the same notice. EPA will take final action on the new attainment date at the time it takes final action on the attainment demonstration and the other necessary submittals. However, if Kentucky and Indiana fail to meet the criteria of the extension policy, EPA will finalize this proposed finding of

failure to attain, and the Louisville area will be reclassified to a serious ozone nonattainment area.

EPA believes that this approach is reasonable since it (1) ensures that the local control measures mandated by the CAA for moderate nonattainment areas, such as Volatile Organic Compound (VOC) and Nitrogen Oxides (NOx) Reasonably Available Control Technology (RACT), are achieved; (2) takes into consideration the transport of pollutants into the Louisville area which impair the ability of the area to meet the air quality standards; and (3) harmonizes the Louisville area attainment date with the schedule for emissions reductions in upwind areas associated with the NOx SIP call.

II. What Are the National Ambient Air Quality Standards?

Since the CAA's inception in 1970, EPA has set NAAQS for six common air pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. For these common air pollutants there are two types of pollution limits referred to as the primary and secondary standard. The primary standard is based on health effects; and the secondary standard is based on environmental effects such as damage to property, plants, and visibility. The CAA requires these standards be set at levels that protect public health and welfare with an adequate margin of safety. These standards allow the American people to assess whether or not the air quality in their communities is healthful. Also, the NAAQS present state and local governments with the air quality levels they must meet to achieve clean air.

III. What Is the NAAQS for Ozone?

The NAAQS for ozone is expressed in two forms which are referred to as the one-hour and eight-hour standards. Table 1 summarizes the ozone standards.

TABLE 1.—SUMMARY OF OZONE STANDARDS

Standard	Value (parts per million)	Type	Method of compliance
1-hour	0.12	Primary and secondary	Concentration of ozone monitored in ambient air must not exceed standard value, on average, more than one day per year over any 3-year period.
8-hour	0.08	Primary and secondary	The 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration measured at each monitor within an area must be equal to or below the standard value.

The one-hour ozone standard of 0.12 ppm has existed since 1979. The eight-hour ozone standard, which replaces the one-hour standard, was adopted by EPA on July 18, 1997 (62 FR 38856). However, the one-hour ozone standard continues to apply for existing nonattainment areas until such time as EPA determines that the area has attained the one-hour ozone standard (40 CFR 50.9(b)). The one-hour standard continues to apply to the Louisville area and it is the classification of the Louisville area relative to the one-hour ozone standard that is addressed in this document.

IV. What Is the Louisville Ozone Nonattainment Area?

The Louisville ozone nonattainment area is an interstate area which includes counties in both Kentucky and Indiana as follows: Jefferson County and portions of Bullitt and Oldham Counties in Kentucky; and Clark and Floyd Counties in Indiana.

Under section 107(d)(1)(C) of the CAA, each area that EPA designated nonattainment for the one-hour ozone standard prior to enactment of the 1990 CAA amendments, such as the Louisville area, retained its nonattainment designation by operation of law upon enactment of the 1990 amendments. Under section 181(a) of the Act, each ozone nonattainment area was also classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme,'' depending on the severity of the area's air quality problem. The design value for a nonattainment area, which characterizes the severity of the area's air quality problem, is represented by the highest design value at any individual ozone monitoring site. The design value of a monitoring site is the fourth highest one-hour daily maximum ozone value recorded in a given three-year period with complete monitoring data. Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.138 and 0.160 ppm were classified as moderate, such as the Louisville area which had a design value of 0.149 ppm in 1989. These nonattainment designations and classifications were codified in 40 CFR part 81 (see 56 FR 56694, November 6, 1991).

TABLE 2.—OZONE NONATTAINMENT CLASSIFICATIONS

Area class	Design value (ppm)	Attainment date
Marginal	0.121 up to 0.138	November 15, 1993.
Moderate	0.138 up to 0.160	November 15, 1996.
Serious	0.160 up to 0.180	November 15, 1999.
Severe	0.180 up to 0.280	November 15, 2005.
Extreme	0.280 and above	November 15, 2010.

Under section 182(b)(1)(A) of the CAA, states containing areas that were classified as moderate nonattainment were required to submit SIPs to provide for certain controls, to show progress toward attainment, and to provide for attainment of the ozone standard no later than November 15, 1996. Moderate area SIP requirements are found primarily in section 182(b) of the CAA.

V. Why Is EPA Proposing To Reclassify the Louisville Area?

In regard to reclassification for failure to attain, section 181(b)(2)(A) of the Act provides that:

Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—

(i) the next higher classification for the area, or

(ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

Furthermore, section 181(b)(2)(B) of the CAA provides that:

The Administrator shall publish a notice in the **Federal Register**, no later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

Table 3 lists the number of days when ambient ozone concentrations exceeded the one-hour ozone standard and the average number of expected exceedances at each monitoring site in the Louisville area for the period 1994–1996. The ozone design value for each monitor is also listed. Note that the average number of expected exceedances per year is not always equal to the average number of days with measured ozone above the standard. Expected exceedance calculations take missing data into account. If a monitor does not collect a complete set of valid data over its monitored period, fractional ''expected exceedances'' are added to account for ozone exceedances that, statistically, could have occurred during periods of missing data within high ozone episodes. The three year average number of expected exceedances is used to determine attainment of the ozone standard. See 40 CFR 50.9(a). Table 3 shows that for 1994–1996, one monitoring site in the Louisville area averaged more than one exceedance day per year; therefore, the area did not attain the standard by November 15, 1996.

Section 181(a)(5) of the CAA states that an area may be eligible for up to two one-year extensions if ''no more than one exceedance of the NAAQS level for ozone has occurred in the area in the year preceding the extension year.'' On October 23, 1997, EPA determined that Louisville qualified for a one-year extension of the attainment date to November 15, 1997 (See 62 FR 55173). Table 4 shows the ozone data for 1995–1997. During this period, two monitoring sites in the Louisville area averaged more than one exceedance per year, and the area's design value was greater than the ozone standard. Because there were multiple exceedances at two monitors during the 1997 ozone season, the Louisville area was not eligible for a second one-year extension under Section 181(a)(5), and the states did not request an extension. Therefore, in this notice, pursuant to section 181(b)(2)(B) of the CAA, EPA proposes to find that the Louisville area did not attain the 1-hour standard by its applicable attainment date.

TABLE 3.—AIR QUALITY MONITORING DATA FOR THE LOUISVILLE NONATTAINMENT AREA (1994–1996)

Site	AIRS site ID	Number of days over standard (1994–1996)	Average number of expected exceedance days per year	Site design value (ppm)
Kentucky Sites (County):				
Buckner (Oldham)	21–185–0004	0	0	0.109
WLKY–TV (Jefferson)	21–111–1021	1	0.37	0.12
Watson (Jefferson)	21–111–0051	3	1	0.119
Brentlinger (Jefferson)	21–111–0027	1	0.33	0.109
Shepherdsville (Bullitt)	21–029–0006	0	0	0.115
Indiana Sites (County):				
Charlestown (Clark)	18–019–0003	5	[a] 1.67	0.132
New Albany (Floyd) [b]	18–043–1004	1	1	0.115

[a] Values over 1.05 represent a violation of the 1-hour ozone standard.
[b] This site became operational in 1995; the data recorded is for 1995–1996 only. The design value is calculated from two years of data rather than three years.

TABLE 4.—AIR QUALITY MONITORING DATA FOR THE LOUISVILLE NONATTAINMENT AREA (1995–1997)

Site	AIRS site ID	Number of days over standard (1995–1997)	Average number of expected exceedance days per year	Site design value (ppm)
Kentucky Sites (County):				
Buckner (Oldham)	21–185–0004	2	0.7	0.109
WLKY–TV (Jefferson)	21–111–1021	1	0.37	0.12
Watson (Jefferson)	21–111–0051	2	0.67	0.12
Brentlinger (Jefferson)	21–111–0027	2	0.67	0.111
Shepherdsville (Bullitt)	21–029–0006	1	0.4	0.116
Indiana Sites (County):				
Charlestown (Clark)	18–019–0003	5	[a] 1.73	0.125

TABLE 4.—AIR QUALITY MONITORING DATA FOR THE LOUISVILLE NONATTAINMENT AREA (1995–1997)—Continued

Site	AIRS site ID	Number of days over standard (1995–1997)	Average number of expected exceedance days per year	Site design value (ppm)
New Albany (Floyd)	18–043–1004	4	[a] 1.33	0.125

[a] Values over 1.05 represent a violation of the 1-hour ozone standard.

A complete listing of the ozone exceedances for each monitoring site, as well as EPA's calculations of the design values, can be found in the docket file for this action.

Table 5 is provided to show expected exceedance days per year for 1995 through 1998. Due to measured ozone exceedances at one monitor, the Louisville area was again unable to attain the standard for the period 1996–1998.

TABLE 5.—AIR QUALITY MONITORING DATA FOR THE LOUISVILLE NONATTAINMENT AREA (1995–1998)

Site	AIRS site ID	Expected exceedance days				Site design value (ppm)	
		1995	1996	1997	1998	1995–1997	1996–1998
Kentucky Sites (County):							
Buckner (Oldham)	21–185–0004	0	0	2.1	1	0.109	0.12
WLKY–TV (Jefferson)	21–111–1021	0	1.1	0	1	0.12	0.121
Watson (Jefferson)	21–111–0051	1	1	0	1	0.12	0.121
Brentlinger (Jefferson)	21–111–0027	1	0	1	1	0.111	0.12
Shepherdsville (Bullitt)	21–029–0006	0	0	1.2	0	0.116	0.111
Indiana Sites (County):							
Charlestown (Clark)	18–019–0003	2.1	0	3.1	3.2	0.125	0.13
New Albany (Floyd)	18–043–1004	1	1	2	2	0.125	0.127

As discussed later in this document, because EPA has now interpreted the CAA to allow for an extension of the attainment date based on an understanding of transport data not available at the time of Louisville's original attainment date and after the one year extended attainment date, EPA believes it is fair to allow Kentucky and Indiana an opportunity to qualify for this attainment date extension before EPA finalizes its finding of failure to attain and reclassifies the Louisville area to serious nonattainment.

This proposal details the following reasons which support EPA's decision to proceed in this manner:

1. EPA has concluded that this is the best way of reconciling the CAA's provisions with respect to ozone transport with the provisions governing graduated attainment dates and with the reclassification provisions. The CAA shows Congressional intent that transport be considered when the Agency acts to reclassify an area, and a reluctance to subject an area to greater controls than necessary to bring local sources into compliance.

2. The Louisville area has been shown to be affected by ozone transport from upwind areas.

3. The Louisville area is now monitoring air quality that, were the area being newly classified, would entitle it to the classification of a marginal nonattainment area. However, if the Louisville area is reclassified to serious nonattainment, it will be required to impose emission control regulations which are normally demanded only for areas monitoring much higher levels of air pollution.

4. Kentucky and Indiana have committed to submit an attainment demonstration by November 1999, which includes all the local control measures required under the CAA for moderate nonattainment areas, demonstrating attainment by the date when upwind controls are expected to be implemented.

Furthermore, EPA's proposal for an extension date is balanced by EPA's action in moving forward with the process of reclassification in the event that the States do not meet the criteria for an extension.

VI. What Is EPA's New Policy Regarding Extension of Attainment Dates for Downwind Transport Areas?

A number of areas in the country that have been classified as ''moderate'' or ''serious'' are affected by pollutants that have traveled downwind from other areas. For these downwind areas, transport of pollutants from upwind areas has interfered with their ability to meet the ozone standard by the dates prescribed by the CAA. As a result, many of these areas, such as the Louisville area, find themselves facing the prospect of being reclassified to a higher classification (e.g., from ''moderate'' to ''serious'') for failing to meet the ozone standard by the specified date.

For some time, EPA has recognized that pollutant transport can impair an area's ability to meet air quality standards. As a result, in March 1995 a collaborative, Federal-state process to assess the ozone transport problem was begun. Through a two-year effort known as the Ozone Transport Assessment Group (OTAG), EPA worked in partnership with the 37 easternmost states and the District of Columbia, industry representatives, academia, and environmental groups to develop recommended strategies to address transport of ozone-forming pollutants across state boundaries.

On November 7, 1997, EPA acted on OTAG's recommendations and issued a proposal (the proposed NO_X SIP call, 62 FR 60318) requiring 22 states and the District of Columbia to submit state implementation plans addressing the regional transport of ozone. These state implementation plans, or SIPs, will decrease the transport of ozone across state boundaries in the eastern half of the United States by reducing emissions of NO_X (a precursor to ozone formation). EPA took final action on the NO_X SIP call on October 27, 1998 (63 FR 57356). EPA expects that the final NO_X SIP call

will assist many areas in attaining the one-hour ozone standard.

On July 16, 1998, in consideration of these factors and the realization that many areas are unable to meet the CAA mandated attainment dates due to transport, EPA issued the extension policy. In this policy the attainment date for an area may be extended provided that the following criteria are met: (1) the area must be identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date or an upwind area in another state that significantly contributes to downwind nonattainment (by ''affected by transport,'' EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area's ability to attain); (2) an approvable attainment demonstration must be submitted with any necessary, adopted local measures and with an attainment date that shows that it will attain the one-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_X SIP call and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind reductions; (3) the area has adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas; and (4) the area must provide that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

EPA contemplates that when it acts to approve such an area's attainment demonstration, it will, as necessary, extend that area's attainment date to a date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. The area would no longer be subject to reclassification for failure to attain by its original attainment date under section 181(b)(2).

VII. Is the Louisville Area Eligible for an Attainment Date Extension Under the Extension Policy?

EPA believes that the Louisville area is affected by upwind transport. In fact, according to the final NO_X SIP call, the Louisville area is affected by transport of pollutants from upwind areas to an extent that the area's ability to meet the one-hour ozone standard is impaired. Therefore, EPA believes that the first of the transport criteria is satisfied. However, before the Louisville area can qualify for an attainment date extension under the extension policy, the remainder of the criteria specified in the extension policy must be met.

In October 1998, EPA notified the Governors of Kentucky and Indiana of the availability of the extension policy. EPA also requested that, if they wished to demonstrate their eligibility for the extension policy, the Governors respond to EPA with a letter committing their respective States to meet the requirements necessary to qualify for an attainment date extension under the policy by November 15, 1999.

On December 3, 1998, Kentucky submitted a letter to EPA providing a commitment to meet the requirements of the extension policy. Similarly, on December 19, 1998, Indiana submitted a letter to EPA providing a commitment to meet the requirements of the extension policy. (EPA's letters notifying the Kentucky and Indiana Governors of the extension policy, and their respective responses, are included in the docket for this rulemaking.)

EPA's review of the Attainment Demonstration SIP for the Louisville area indicates that Kentucky and Indiana must submit the following in order to meet the requirements set forth in the extension policy:

1. A technical analysis establishing the influence of transport on ozone levels within the Louisville area. This requirement can be met by citing the analysis contained in EPA's aforementioned NO_X SIP call;

2. Regulations or negative declarations addressing certain CAA requirements for the Indiana portion of the Louisville area including: (a) Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation; (b) SOCMI reactors; (c) Lithography; (d) Batch processes; (e) Industrial wastewater treatment; (f) Business plastics; (g) Cleanup solvents; and (h) Aerospace coatings;

3. Source specific reasonably available control technology (NO_X RACT) measures for the Kentucky portion of the Louisville area; and

4. A revised attainment demonstration meeting the criteria set forth in the extension policy.

In addition, the States must submit SIP revisions addressing any other local control measures necessary for attainment. All measures must also be implemented in accordance with the time frames set forth in the extension policy.

VIII. What Progress Has Been Made by Kentucky and Indiana To Meet the Extension Policy so That an Attainment Date Extension Can Be Obtained?

Kentucky and Indiana have already done extensive work toward meeting the extension policy. Several major portions of the extension policy have already been satisfied, and Kentucky and Indiana have already made substantial progress toward compliance with the criteria for obtaining an attainment date extension.

Regarding the first item, EPA believes that Kentucky and Indiana can establish the influence of transport on ozone levels within the Louisville area by citing the analysis contained in EPA's NO_X SIP call.

Regarding the second item, Indiana is reviewing the source inventory for Clark and Floyd Counties. Indiana has committed to either develop RACT regulations if those source categories exist in Clark and Floyd Counties, or make a formal declaration that no subject sources of the category exist in the two counties. Kentucky has already met the VOC RACT requirements.

Regarding the third item, the Air Pollution Control District of Jefferson County, Kentucky has developed and is currently adopting a NO_X RACT regulation that requires Jefferson County area sources to submit source specific SIP revisions consistent with NO_X RACT requirements. For the remaining part of the Louisville area which includes portions of Bullitt and Oldham Counties there are no existing major NO_X emission sources, therefore the Commonwealth of Kentucky is not required to implement NO_X RACT requirements for that area. Indiana has already met the NO_X RACT requirements.

Regarding the fourth item, Kentucky and Indiana are currently working to develop an approvable attainment demonstration. They have initiated the steps leading to a final attainment demonstration and have committed to completing and submitting the attainment demonstration by November 15, 1999.

IX. What Actions Have Kentucky and Indiana Taken To Improve Air Quality in the Louisville Area?

Jefferson County, Kentucky, has implemented VOC emission reductions as part of its 15 percent rate-of-progress plan (15 percent plan). EPA is currently drafting rulemaking on this plan. The VOC controls Jefferson County has implemented include: (1) VOC emission reduction requirements and a rule effectiveness improvement plan for

sources subject to the requirements; (2) architectural and industrial maintenance coatings regulations; (3) transportation control measures including transit, rideshare, alternative fuels, and traffic signal improvements; (4) automobile refinishing emission control regulations; (5) Stage II vapor recovery and control regulation; (6) solid waste landfill regulations; (7) a basic plus vehicle inspection and maintenance (I/M) program which includes loaded idle testing, pressure testing requirements, and tampering inspections which apply to vehicles that regularly or routinely commute to Jefferson County; and (8) the use of the reformulated gasoline (RFG) program for off-road and on-road mobile sources.

Jefferson County has sought further reductions from the I/M program by including loaded mode testing and enhanced mechanic training. EPA recently approved Jefferson County's I/M program requirement for a check of the On Board Diagnostic (OBD) system on model-year 1996 and newer automobiles (refer to 64 FR 12798, March 15, 1999). Jefferson County has maintained an innovative approach to the local I/M program, also referred to as the Vehicle Emission Testing (VET) program, since its inception in 1984. The program continues to be effectively implemented and Jefferson County remains a national leader through, for example, implementation of a vehicle repair report card which evaluates the effectiveness of automobile repairs required under the I/M program. The program also remains on the forefront with the requirement for the evaluation of automobiles by a VET staff mechanic before an emission certification waiver request is granted. The I/M program is an important component of the emission reduction strategy in Jefferson County.

Jefferson County has adopted RACT regulations requiring additional emission reductions from bakery oven facilities, ferroalloy and calcium carbide production facilities, and volatile organic loading facilities. Jefferson County plans to submit these RACT regulations to EPA in the near future. To provide further emission reductions, Jefferson County is currently adopting a cold cleaning operations regulation.

The State of Indiana has also taken a number of actions to improve air quality in the Louisville area. Indiana has adopted and fully implemented the VOC emission reduction measures included in its 15 percent rate-of-progress plan (15 percent plan). EPA published final approval of Indiana's 15 percent plan in May 1997 (62 FR 24815).

Indiana's 15 percent plan limits VOC emissions from local operations such as volatile organic liquid storage tanks, automobile refinishing, municipal solid waste landfills, ship building and ship repair, and a local offset printing facility. The plan also includes an upgraded vehicle inspection and maintenance program, which uses a dynamometer to better identify polluting cars. Other measures in place include required use of Stage II gasoline vapor recovery systems at service stations, implementation of a gasoline with lower Reid Vapor Pressure (RVP); a ban on residential open burning, and a ridesharing program. Municipal solid waste landfills were required to install a gas collection and combustion system sooner than the federal time schedule. Indiana has also implemented RACT rules for sources of NO_X.

To further improve air quality, Indiana has implemented additional measures including a rule establishing vapor pressure limits for solvents used in cold cleaning degreasing. Indiana has also established a local steering committee to assist in identifying additional emission reduction opportunities that will continue to improve and maintain air quality. The steering committee reflects broad representation including the public, industry, local government, health associations, and environmental groups.

X. If EPA Finalizes Its Proposed Rulemaking Reclassifying the Louisville Area, What Would Be the Area's New Classification?

Section 181(b)(2)(A) of the Act requires that, when an area is reclassified for failure to attain, its reclassification will be the higher of the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the **Federal Register**. The design value of the Louisville area at the time of the proposed finding of failure to attain is based on air quality monitoring data from 1996 through 1998. (Refer to Table 5 for 1996–1998 data.) The 1996–1998 design value is 0.130 ppm, as derived from the Charlestown, Indiana (Clark Co.) monitoring site, and the classification of ''marginal'' nonattainment would be applicable to that design value. By contrast, because the Louisville area is currently classified ''moderate,'' the next higher classification for the area is ''serious'' nonattainment. Since ''serious'' is a higher nonattainment classification than ''marginal'' under the statutory scheme, the Louisville area would be reclassified to serious nonattainment, if EPA finalizes its proposal to reclassify.

XI. If the Louisville Area Is Reclassified to Serious, When Would It Be Required To Attain the Standard?

Under section 181(a)(1) of the Act, the new attainment deadline for moderate ozone nonattainment areas reclassified to serious under section 181(b)(2) would be ''as expeditious as practicable,'' but no later than the date applicable to the new classification, i.e., November 15, 1999. However, EPA does not expect to take final action on this proposed reclassification until after November 15, 1999. As stated previously, EPA is proposing to allow the states adequate time to demonstrate that an extension of the attainment date, instead of a reclassification, would be appropriate under the extension policy. As a practical matter, even if EPA were to reclassify the Louisville area immediately, there would likely be insufficient time for Kentucky and Indiana to submit new attainment demonstrations and actually attain the one-hour ozone standard by November 15 of this year. EPA believes that the practical impossibility of meeting the November 1999 statutory serious area attainment deadline requires EPA to establish a new attainment date for the area. EPA believes that it is appropriate to propose an alternative deadline for the Louisville area that is as expeditious as practicable. Therefore, in this document EPA is proposing options for extending the attainment date in the event that the area is reclassified to serious.

Section 182(i) states that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency for submission of the new requirements applicable to an area which has been reclassified. Where an attainment date has already passed or is otherwise impossible to meet, EPA believes that the Administrator may also adjust an attainment date to assure fair and equitable treatment consistent with the provisions in section 182(i), notwithstanding the parenthetical clause. EPA also notes another provision of the CAA in section 110(k)(5) pertaining to findings of SIP inadequacy that allows the Administrator to adjust attainment dates when such dates have passed. Although this latter provision is not directly applicable to a reclassification, EPA believes that the provision illustrates a recognition by Congress of the limited instances in which it becomes necessary to adjust attainment dates, particularly

where it is otherwise impossible to meet the statutory date.

One option is to construct a schedule consistent with recent reclassifications of other areas. EPA has recently reclassified other moderate ozone nonattainment areas, including Santa Barbara, California; Phoenix, Arizona; and Dallas-Fort Worth, Texas. The attainment date for these areas is November 15, 1999. EPA published the notice reclassifying the Dallas-Fort Worth area on February 18, 1998, thereby providing approximately 21 months for the area to attain the standard. EPA concluded that 21 months was an adequate period for a moderate attainment area to attain the standard where the CAA mandated attainment date for the new classification had not yet lapsed, but where there was less time remaining than the Act had contemplated. If EPA finalizes this proposed reclassification of the Louisville area, EPA could require the area to attain the standard on a similar time frame. Applying this approach to the Louisville area would result in setting a new attainment date 21 months from publication of the final reclassification notice.

Another option would be to set an attainment date that takes into account the impact of transport on the area, even if the area fails to fully meet the criteria for the attainment date extension policy. As stated previously, EPA believes that the Louisville area is affected by transported pollutants. This attainment date would coincide with the date set for upwind area reductions under the NO_X SIP call, or May 2003. Although the Louisville area, if reclassified, would have to meet the requirements for a serious area, under this option it would not be held responsible for emission reductions necessary to compensate for transported pollution. This option would then be consistent with EPA's approach of allocating responsibility for pollution fairly among the states. EPA welcomes any comments on the options discussed above.

An area reclassified to serious is required to submit SIP revisions addressing the serious area requirements for the one-hour ozone standard in section 182(c). If the Louisville area is reclassified, EPA must also address the schedule by which Kentucky and Indiana are required to submit SIP revisions meeting the serious area requirements. One option is to require that the States submit SIP revisions containing all of the serious area requirements no later than one year after final action on the reclassification. This submission would include a new attainment demonstration and all additional measures required by section 182(c) of the Act. The additional measures include, but are not limited to, the following: (1) Attainment and reasonable further progress demonstrations; (2) an enhanced vehicle I/M program; (3) a clean-fuel vehicle program; (4) a 50 ton-per-year major source threshold; (5) more stringent new source review requirements; (6) an enhanced monitoring program; and (7) contingency provisions. If the submission shows that the area can attain the standard sooner than the attainment date established in a final reclassification notice, EPA would adjust the attainment date to reflect the earlier date, consistent with the requirement in section 181(a)(1) that the standard be attained as expeditiously as practicable. EPA solicits comments on the appropriate schedule for submitting these SIP revisions.

XII. When Will EPA Make a Final Decision on Whether To Reclassify or Grant an Extension to the Louisville Area?

If Indiana and Kentucky submit the aforementioned air quality analyses and regulations to EPA by November 15, 1999, EPA will publish a supplemental proposal to address the approvability of the submittals. If EPA proposes and subsequently takes final action to approve the States' submittals, the Agency would finalize the attainment date extension for the Louisville area to an appropriate date, and not finalize the finding of failure to attain. However, if EPA proposes and subsequently takes final action to disapprove the States' submittals, the Agency would instead finalize the reclassification of the Louisville area to serious. If EPA finalizes the reclassification, Kentucky and Indiana would be required to submit SIPs that adopt the serious area requirements. A schedule for submitting the SIPs would be set at that time.

XIII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposal would not create a mandate on state, local, or tribal governments. It would not impose any enforceable duties on these entities. The SIP submission requirements are not judicially enforceable. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this proposal.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposal is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not establish a further health or risk-based standard because it implements a previously promulgated health or safety-based standard.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal

governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposal would not significantly or uniquely affect tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposal will not have a significant impact on a substantial number of small entities because a finding of failure to attain under section 181(b)(2) of the CAA, and the establishment of a SIP submittal schedule for the reclassified area, do not, in and of themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FEC.*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to requirements of the rule). Instead, this proposal proposes to make a determination and to establish a schedule for states to submit SIP revisions and does not propose to directly regulate any entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must, unless otherwise prohibited by law, prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Sections 202 and 205 do not apply to today's action because the proposed determination that the Louisville area failed to reach attainment does not, in-and-of-itself, constitute a Federal mandate because it does not impose an enforceable duty on any entity. In addition, the CAA does not permit EPA to consider the types of analyses described in section 202, in determining whether an area has attained the ozone standard or qualifies for an extension. Finally, section 203 does not apply to today's proposal because the SIP submittal schedule would affect only the states of Kentucky and Indiana, which are not small governments.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 4, 1999.

John H. Hankinson, Jr.,

Regional Administrator, Region 4.

Dated: May 12, 1999.

Richard C. Karl,

Acting Regional Administrator, Region 5.

[FR Doc. 99–12751 Filed 5–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 146

[FRL–6348–9]

Revisions to the Underground Injection Control Regulations for Class V Injection Wells—Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment on related proposed rule.

SUMMARY: On July 29, 1998, EPA published the proposed Revisions to the Underground Injection Control Regulations for Class V Injection Wells in the **Federal Register** (63 FR 40586). The public comment on this proposal was open until November 30, 1998. During and after the close of the public comment period, EPA became aware of data that might help make key decisions relating to the proposed Class V requirements and to refine the estimated economic burden of these requirements. The purpose of this notice is to: provide the public with this new data for review and comment; to seek public comment on how EPA intends to use this data in the Class V rule making effort; and, solicit public comment on issues resulting from this new data and the public comments already received on the Class V proposal.

DATES: EPA must receive public comment, in writing, on the notice of data availability by June 21, 1999.

ADDRESSES: Send written comments to the UIC Class V, W–98–05 Comment Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW, Washington, D.C. 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW., East Tower Basement, Washington, D.C. 20460. Comments may be submitted electronically to ow-docket@epamail.epa.gov.

Please submit all references cited in your comments. Facsimiles (faxes) cannot be accepted. Send one original and three copies of your comments and enclosures (including any references). Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

With one exception, the documents referenced in this notice are available for review in the Water Docket at the above address. The proposed rule, supporting documentation and public comment are also available through the docket. For information on how to access docket materials, please call (202) 260–3027 between 9:00 a.m. and 3:30 p.m. Eastern Standard Time, Monday through Friday.

State Source Water Assessment Plans (SWAPs), which are discussed later in this notice, are available for review on the EPA, Office of Ground Water and Drinking Water Home Page www.epa.gov/ogwdw. The SWAPs are also available for review at the U.S. Environmental Protection Agency; 401 M Street, SW., 1127 East Tower, Washington, D.C. 20460. To make an appointment to review the SWAPs, please contact Robyn Delehanty, Underground Injection Control Program, Office of Ground Water and Drinking Water (mailcode 4606), EPA, 401 M Street, SW, Washington, D.C., 20460. Phone: 202–260–1993. E-mail: delehanty.robyn@epa.gov.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Safe Drinking Water Hotline, phone 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Standard Time. For technical inquiries, contact Robyn Delehanty, Underground Injection Control Program, Office of Ground Water and Drinking Water (mailcode 4606), EPA, 401 M Street, SW, Washington, D.C., 20460. Phone: 202–260–1993. E-mail: delehanty.robyn@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Class V wells are shallow injection wells or systems that are used to dispose of non-hazardous wastes directly into or above underground sources of drinking water (USDWs). The Safe Drinking Water Act (SDWA) is designed to protect the quality of drinking water in the United States, and Part C specifically mandates the regulation of underground injection of fluids to ensure that such injection does not endanger USDWs. The Agency has promulgated a series of underground injection control (UIC) regulations under this authority.

On July 29, 1998, EPA published in the **Federal Register** the proposed Revisions to the Underground Injection Control Regulations for Class V Injection Wells. The proposal would change the Class V Underground Injection Control (UIC) regulations by adding new requirements for three categories of Class V wells that are located in ground-water based source water protection areas being delineated for community water systems and non-transient non-community water systems under the 1996 Amendments to the SDWA. Class V motor vehicle waste disposal wells in such areas would either be totally banned or banned with an option for owners and operators to get a permit that requires fluids released in those wells to meet the drinking water maximum contaminant levels (MCLs) or other health-based standards at the point of injection. Class V industrial waste disposal wells in the delineated areas also would be required to meet the MCLs and other health-based standards at the point of injection, and large-capacity cesspools in such areas would be banned.

II. Statutory and Regulatory Framework

Section 1421 of the Act requires EPA to propose and promulgate regulations specifying minimum requirements for state programs to prevent underground injection that endangers drinking water sources.

Section 1422 of the Act provides that states may apply to EPA for primary responsibility to administer the UIC program (those states receiving such authority are referred to as ''Primacy States''). Where states do not seek this responsibility or fail to demonstrate that they meet EPA's minimum requirements, EPA is required to prescribe, by regulation, and implement a UIC program for such states. Also, currently all Class V UIC Programs in Indian Country are directly implemented by EPA.

III. Additional Data

A. The Class V Study

EPA is conducting a study of Class V injection wells to meet the requirements of a modified consent decree in Sierra Club v. Browner (D.D.C. No. 93–2644), which requires the Agency to study Class V wells and to determine if additional Class V regulations are needed to protect USDWs from Class V injection wells that are not subject to the current regulatory proposal. The study has consisted of an information collection effort for 23 subclasses of Class V wells, including the three well types addressed in the July 29, 1998 proposal: motor vehicle waste disposal wells; industrial waste disposal wells; and large-capacity cesspools. The information collection has included both state and EPA Region data collection, through survey questionnaires and selected site visits, and collection from other sources, such as trade associations, research institutes, and universities.

Although the study is still ongoing and the final methods and results have not yet been fully documented, available information on the three well types targeted by the proposed Class V rule has been compiled in a single notebook and placed in the public docket for review and comment. After a summary of the study methods, this notebook is organized into three basic sections. First, it provides the latest state inventory information for each of the three well types as reported in survey responses. This information includes tables that show the documented and estimated number of wells of each type in each state. Second, the notebook provides information on contamination incidents identified, including a state-by-state summary table and copies of available case-specific documentation. Third, the notebook provides injectate quality data collected for motor vehicle waste disposal wells and industrial wells.

EPA plans to use the latest inventory information in projecting the numbers of wells that might be affected by the new Class V regulation. The contamination incident information and injectate quality data will be used to help assess the threat posed by the different well types.

B. Draft Report on Contaminant Occurrence in Public Water Systems

EPA seeks comment on a draft report titled A Review of Contaminant Occurrence in Public Water Systems Related to Class V Injection Wells. This draft report, which has been placed in the public docket for review, summarizes occurrence data collected from 14 different State databases for public drinking water systems. In total, the data includes more than 10 million analytical results from more than 25,000 public water systems. Twenty three contaminants known or believed to be associated with discharges from industrial and motor vehicle waste disposal wells were selected for analysis. EPA plans to use information in this report to help refine its assessment of the threat posed by Class V injection wells.

C. EPA Regional Data (Regions II and VIII)

On March 1–3, 1999, staff visited the EPA Region II Office in New York City to review case study files on Class V wells. Region II was chosen for this records search because the Region has accumulated large amounts of information (paper files and electronic data) on Class V motor vehicle and industrial waste disposal wells found within the State of New York. This information was developed and collected by the Region while implementing and enforcing the federal UIC regulations in New York. Each year, approximately 600 to 800 facilities are inspected throughout the state.

Approximately 70 motor vehicle facility inspection files and well closure

plans were reviewed during the site visit. About 60 files and plans for industrial wells were reviewed. Of those reviewed, 27 files on motor vehicle waste disposal wells and 37 files on industrial wells have been copied and assembled in the notebook ''Region II Data'' available in the public docket. Most of these files include examples of the ''Class V UIC Permit Application/ Closure Request'' that Region II officials send to well owners or operators. Also included in the notebook are printouts from a database provided by Mobil Corporation that characterize the wastes generated by 38 different motor vehicle facilities; files on possible (investigation ongoing) and confirmed groundwater contamination incidents; facility-specific injectate quality data for a few sites; and limited information on current management practices and the costs of closing motor vehicle waste disposal wells and industrial wells. EPA will use the injectate quality data and contamination incident information to help evaluate the potential threat that motor vehicle waste disposal wells and industrial wells pose to USDWs. EPA will use the information on current management practices and costs in the economic analysis to support conclusions on the possible impacts and costs of the rule.

Recent information compiled by the EPA Region VIII office has also been assembled in the public docket for review (Region VIII directly implements the Class V UIC programs in Colorado, Montana, and South Dakota, while North Dakota, Utah, and Wyoming are Class V Primacy States). This material, which is in the form of various reports and tables of analytical data, is organized in a set of file folders all labeled ''Region VIII Data'' in the docket.

The Region VIII files primarily contain injectate quality data for motor vehicle waste disposal wells and industrial wells. The motor vehicle well data include sampling results from nine motor vehicle facilities in South Dakota in 1989 and 1990 (in two bound contractor reports in the docket). The injectate quality data for industrial wells consist of tables of sampling results for seven different industrial sites, including a chemistry lab in 1992, a machine parts and fishing equipment manufacturer in 1995, a U.S. Fish and Wildlife Service technology center in 1997, an ammunition manufacturer in 1996–1997, an electric motor repair shop in 1995–1996, and two jewelry manufacturers from 1992 to 1998. The Region VIII files also contain soil and groundwater sampling data for an ammunition manufacturing facility in South Dakota.

EPA will use the injectate quality and contamination incident data from Region VIII to help evaluate the potential threat to USDWs posed by motor vehicle waste disposal wells and industrial wells.

D. Well Closure Cost Data

After the close of the comment period, Penske Truck Leasing Company (Penske) submitted Class V well closure cost information. In the last three years, Penske has received permits for two Class V wells and closed fifteen Class V wells in their facilities nationwide. Penske supplied closure cost information for seven of the seventeen closures. For the seven well closures, Penske supplied an individual summary sheet, correspondence with regulatory agencies, and a well closure report. In addition, a general summary sheet was included which indicates closure costs and other miscellaneous information on all fifteen wells closed by Penske. EPA will review the Class V well closure cost information from the seven documented well closures to assess its usefulness in refining well closure costs in the economic analysis.

E. Source Water Assessment Plans

Under the Safe Drinking Water Act (SDWA) amendments of August 1996, States are required to develop drinking water Source Water Assessment Programs (SWAPs) for submission to EPA by February 6, 1999. EPA then has nine months to approve or disapprove these individual State SWAPs. Most States met the February 6, 1999 deadline, EPA expects to receive the remaining State programs for review in the next few months.

EPA will examine how each state intends to delineate ground water-based source water protection areas around community and non-transient public non-community drinking water supplies. EPA will compare this new information with assumptions made in the economic analysis and make appropriate modification to these assumptions to more accurately estimate the economic burden of the regulatory requirements.

F. Alabama Department of Environmental Management Report

EPA received a report prepared by the Alabama Department of Environmental Management titled Regulation of the Disposal of Funeral Home Discharges Through Class V Injection Wells. The National Funeral Home Directors Association submitted this document to EPA and requested that it be included in the docket.

IV. Additional Issues

The public comments and new information that EPA has obtained since the close of the public comment period have also raised implementation issues. EPA is requesting comment on the additional issues outlined below.

A. Phase-In of Rule Coverage Beyond Source Water Protection Areas (SWPAs)

The proposed regulation would regulate motor vehicle wells, industrial wells, and large-capacity cesspools in SWPAs for community water systems (CWS) and non-transient non-community water systems (NTNCWS) that use groundwater as a source. EPA sought comment in the preamble as to whether or not limiting the rule to these SWPAs was appropriate. EPA received numerous comments that suggested broadening the proposal to include other sensitive ground water areas such as sole source aquifers, karst, sand, gravel and aquifer recharge areas, or even statewide in order to better protect existing public drinking water supplies, future drinking water supplies, and individual wells. While EPA believes that these comments have merit, they also raise issues about how to implement the rule in these additional areas. EPA is evaluating various options suggested by commenters for applying the rule to these additional areas.

If the rule is expanded beyond SWPAs, there would be many additional injection wells covered and it may be desirable to phase in the rule over a longer period of time. As an example, the new UIC requirements would be effective in SWPAs as they are delineated, similar to the proposed rule. Primacy states would then be required to identify the additional sensitive areas that would be subject to the rule. This identification would be required by January 2004. The regulated entities in these identified areas would then have until January 2007 to comply with the rule. If a State failed to identify additional sensitive areas by January 2004, the rule could be effective statewide.

If the EPA decided to apply the final rule to areas outside of SWPAs, this phased-in approach for implementation would allow a state the flexibility to identify critical groundwater areas within the state and would also provide well owners and operators adequate time to identify viable alternatives to their current disposal practices. Lastly, expanded coverage would satisfy concerns about the protection of future sources of drinking water, private

drinking wells, and other sensitive ground water areas. EPA requests comment on this phased-in approach.

B. Identifying the Point of Injection

Commenters have suggested that EPA identify the point of injection and the location at which samples would be collected to determine compliance with the Class V rule.

EPA is considering clarifying the point of injection/sampling point as the last accessible point prior to injection. In the case of septic tanks, the last accessible point prior to injection would be the distribution box between the septic tank and the leach field. If a sampling point is not installed after the septic tank, the point of injection would be at or before the septic tank. For a drywell, the sampling point would be the end of the pipe before the waste enters the well.

C. Requirements for Industrial Wells

Some commenters submitted comments and information suggesting that industrial wells should be subject to the same permit requirements as motor vehicle wells. The proposal identified three permit conditions for motor vehicle wells: meeting MCLs and other health-based standards at the point of injection, monitoring for liquid and sludge, and best management practices. EPA request comments on this suggestion.

Dated: May 19, 1999.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 99–13016 Filed 5–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–6347–5]

State of Alabama; Underground Injection Control (UIC) Program Revision; Withdrawal of Alabama's Class II UIC Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking, public hearing and public comment period on withdrawal.

SUMMARY: EPA announces a proposed rulemaking, public hearing and public comment period regarding withdrawal of Alabama's Class II Underground Injection Control (UIC) Program from the State Oil and Gas Board of Alabama on the grounds that it does not regulate as ''underground injection,'' hydraulic fracturing associated with coalbed methane gas production. This program is currently approved by EPA under section 1425 of the Safe Drinking Water Act (SDWA), as amended. This action is being taken in accordance with paragraph 2(a) of the Writ of Mandamus issued on February 18, 1999, by the U. S. Court of Appeals for the Eleventh Circuit and the requirements in 40 CFR 145.34(b)(2).

By court order, the Regional Administrator for EPA's Region 4 Office informed the State Oil and Gas Board of Alabama of specific areas of alleged noncompliance regarding its approved UIC Program. Specifically, EPA informed the State that, consistent with the Eleventh Circuit's ruling in *LEAF* v. *EPA*, hydraulic fracturing associated with coalbed methane gas production must be regulated as an ''underground injection'' under Alabama's UIC Program. Withdrawal of the Alabama program would, if completed, divest Alabama of primary enforcement authority under the SDWA to regulate Class II Wells, including hydraulic fracturing associated with coalbed methane gas wells within Alabama.

EPA is proceeding at this time with this proposed rulemaking, notice of public hearing, and notice of public comment period in order to comply with paragraph 2(a) of the Writ of Mandamus because hydraulic fracturing associated with coalbed methane gas production is not currently regulated as underground injection (by permit or rule) pursuant to the EPA-approved underground injection control program for Alabama.

At the public hearing, all interested persons shall be given the opportunity to make written or oral presentations on EPA's proposed action to withdraw approval of Alabama's Section 1425 approved Class II Program on the grounds of its failure to regulate as ''underground injection'' hydraulic fracturing associated with coalbed methane gas production. In addition, comments may be submitted as provided herein.

DATES: The public hearing will be held Wednesday, July 28, 1999, at 5:30 p.m. Central Standard Time (CST).

Written comments on EPA's proposed rule must be received by the close of business Thursday, August 5, 1999.

ADDRESSES: The public hearing will be held at the Tuscaloosa Public Library, Rotary Room, 1801 River Road, Tuscaloosa, Alabama 35401. Those interested should contact the Tuscaloosa Public library at (205) 345–5820 for directions.

Persons wishing to comment are invited to submit oral or written comments at the public hearing or submit written comments to the Ground Water/Drinking Water Branch, Ground Water & UIC Section, United States Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960, Attention: Mr. Larry Cole.

Copies of documents regarding this action are available between 8:30 a.m. and 4:00 p.m. Monday through Friday at the following locations for inspection and copying: Environmental Protection Agency, Region 4, 9th Floor Library, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960, PH: (404) 562–8190; and the State Oil & Gas Board of Alabama, 420 Hackberry Lane, Tuscaloosa, AL 35489–9780, PH: (205) 349–2852.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Marsh, at (404) 562–9450, or Mr. Larry Cole, at (404) 562–9474 or at the following address: Environmental Protection Agency, Water Management Division, Ground Water/Drinking Water Branch, Ground Water & UIC Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303–8960.

SUPPLEMENTARY INFORMATION:

I. Background Information

On August 2, 1982, EPA granted primary enforcement responsibility (primacy) for the Class II Underground Injection Control (UIC) Program under section 1425 of the Safe Drinking Water Act (SDWA) to the State of Alabama. The SDWA requires EPA to approve an effective in-place state UIC Program to protect Underground Sources of Drinking Water (USDW) from endangerment that could result from the improper injection of fluids associated with, among other things, oil and gas production. On May 3, 1994, the Legal Environmental Assistance Foundation, Inc. (LEAF) submitted a petition to EPA to withdraw Alabama's UIC Program asserting that the State was not regulating activities associated with coalbed methane gas production wells. Following EPA's May 5, 1995 denial of the petition, LEAF sought review of this decision by the United States Court of Appeals for the Eleventh Circuit. On August 7, 1997, in *LEAF* v. *EPA*, 118 F. 3d 1467 (11th Cir. 1997), the Court held as follows: hydraulic fracturing activities constitute ''underground injection'' under Part C of the Safe Drinking Water Act, *id.* at 1478; all underground injection is required to be regulated (by permit or rule), *id.* at 1474;

and hydraulic fracturing associated with coalbed methane gas production is not currently regulated under Alabama's UIC Program, *id*. at 1471. On February 18, 1999, the Eleventh Circuit issued a Writ of Mandamus directed at EPA to enforce its August 1997 decision. The Writ established a schedule for EPA to follow to determine whether, in light of the Court's holding regarding hydraulic fracturing, EPA should withdraw approval of Alabama's UIC Program.

In response to the LEAF decision and the Writ of Mandamus, EPA must review Alabama's UIC Program in accordance with federal regulations at 40 CFR 145.34(b). The timing of EPA's review and decision-making process must adhere to the time frame contained in the Writ of Mandamus. In order to comply with the Writ of Mandamus and 40 CFR 145.34(b)(2), EPA must hold a public hearing no less than 60 days nor more than 75 days, following the publication of this notice of the hearing in the **Federal Register**. In order to comply with this time frame, Region 4 has decided to hold a public hearing on July 28, 1999, at the time and place indicated in the previous section. All interested persons shall be given the opportunity to make written or oral presentation at the public hearing on whether EPA should withdraw Alabama's Class II UIC Program on the ground that it does not regulate as ''underground injection'' hydraulic fracturing associated with coalbed methane gas production.

Alabama Class II UIC Section 1425 Program Deficiencies

The State Oil & Gas Board of Alabama is not regulating hydraulic fracturing of coalbed methane gas production wells as ''underground injection'' (by permit or rule) pursuant to its EPA-approved underground injection control program.

Withdrawal Procedure

Section 1425 of the SDWA and subsequent published EPA guidance does not contain express procedures for the withdrawal of a Section 1425 Program. EPA has promulgated procedures for withdrawing a Section 1422 Program at 40 CFR 145.34(b). In lieu of different express regulatory provisions for the withdrawal of Section 1425 Programs and in light of the Court's Writ of Mandamus, EPA is following the procedures at 40 CFR 145.34(b) in proposing to withdraw Alabama's Section 1425 Program.

On March 19, 1999, the Regional Administrator of EPA Region 4 notified the Supervisor of the State Oil and Gas Board of Alabama of EPA's decision to initiate the process to withdraw approval of the Alabama UIC Program. The Regional Administrator's notice to the Supervisor of the State Oil and Gas Board of Alabama constituted the first step in the withdrawal process. According to the procedures established in 40 CFR 145.34(b) and the Writ of Mandamus, the State was given 30 days after the notice to demonstrate that its UIC Program is in compliance with the SDWA and 40 CFR part 145 (i.e., that hydraulic fracturing associated with methane gas production is regulated as ''underground injection,'' by permit or rule, pursuant to the EPA approved Underground Injection Control Program).

The Supervisor of the State Oil and Gas Board responded to the Regional Administrator's letter by a letter dated April 15, 1999. The response indicated that on March 5, 1999, the State Oil & Gas Board of Alabama promulgated rules which regulate hydraulic fracturing of coalbed methane gas wells by rule authorization. These new regulations were added as an Emergency Order and sent to the Alabama Legislative Reference Service under Section 41–22–5 of the Code of Alabama (1975). They became effective on March 11, 1999, for a period of no longer than 120 days. The State Oil & Gas Board expects the rules to be made permanent prior to the expiration of the Emergency Order. To become part of the EPA approved UIC Program, Alabama should submit a revised UIC Program package containing new regulations to EPA for review and approval. These new regulations must protect current and potential USDWs from endangerment.

The State will not have fully corrected the identified program deficiencies consistent with the requirements of the Writ of Mandamus until a revised Alabama Section 1425 Program has been approved by EPA. Therefore, in accordance with 40 CFR 145.34(b)(2), the Regional Administrator of Region 4 is soliciting comments on the appropriateness of withdrawing the Class II UIC Program from the State Oil & Gas Board of Alabama on the grounds that it does not, as currently approved by EPA, regulate as ''underground injection'' hydraulic fracturing associated with methane gas production. This action constitutes the second step in the withdrawal process set out in 40 CFR 145.32(b) and the Writ of Mandamus. Following the public hearing and close of the public comment period, EPA will fully evaluate the record in this matter. If EPA determines that the State is still not in compliance, the Administrator will notify the State.

Within 90 days of receipt of that notification, the State of Alabama must fully implement any required remedial actions regarding regulating hydraulic fracturing or the State's Class II UIC Program will be withdrawn. Class II program approval will, however, not be withdrawn if Alabama can demonstrate that hydraulic fracturing associated with methane gas production is regulated as ''underground injection'' (by permit or rule) pursuant to the EPA approved underground injection control program. If EPA withdraws approval of the Alabama Class II Program pursuant to the requirement of 40 CFR 145.32(b) and the Writ of Mandamus, it will propose and promulgate a federal program for Class II wells located in Alabama, including hydraulic fracturing associated with methane gas production.

EPA is providing a public comment period regarding withdrawal of the Alabama Class II UIC Program for failure to adequately regulate hydraulic fracturing associated with methane gas production as ''underground injection.'' Public comments received on or before close of business on August 5, 1999, will be considered in EPA's final evaluation of the State of Alabama Section 1425 Program. Comments may be submitted at the public hearing to be held on July 28, 1999, at 5:30 p.m., CST in the Rotary Room of the Tuscaloosa Public Library located at 1801 River Road, Tuscaloosa, Alabama 35401.

II. Regulatory Impact/Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045: Children's Health Protection

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that:

(1) Is determined to be ''economically significant'' as defined under Executive Order 12866; and,

(2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulations. This rule is not subject to E.O. 13045 because it is not economically significant as defined in E.O. 12866. Further, this rule does not establish an environmental standard intended to mitigate health or safety risks. This rule proposes to withdraw federal approval of Alabama's UIC Class II Program in response to a court order to do so. However, the requirements of the Alabama UIC Class II Program relating to underground injection will remain in effect as a matter of State law. Additionally, if EPA withdraws the State approved Class II UIC Program, EPA will promulgate a replacement federal program. Therefore, this proposed rule does not present any foreseeable effect on children's health and well being.

C. Paperwork Reduction Act

There are no information collection requirements established by this proposed rule. Therefore, the Paperwork Reduction Act does not apply.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Regional Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule merely proposes to withdraw federal approval of the UIC Program for Class II wells in the State of Alabama, except for those in Indian lands. Withdrawal of such approval does not change the regulatory requirements that currently apply to such wells as a matter of State law, nor does it add additional federal regulatory requirements.

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments.

If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12785 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule does not create a mandate on a state, local or tribal government. The proposed rule does not impose any enforceable duties on these entities. The rule merely proposes to withdraw federal approval of Alabama's UIC Class II Program. However, the requirements of that Program relating to underground injection will remain in effect as a matter of State law. Accordingly, the requirements of Section 1(a) of Executive Order 12875 do not apply to this proposed rule.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement including a cost-benefit analysis for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the proposed rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no federal mandates (under the regulatory provision of Title II of the UMRA), for state, local or tribal governments, or the private sector. The proposed rule imposes no enforceable duty on any state, local or tribal governments or the private sector. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's proposed rule is not subject to the requirements of section 203 of UMRA.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the proposed rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian Tribal governments. This proposed rule does not affect the UIC Program on Indian Tribal lands. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

List of Subjects in 40 CFR Part 147

Environmental protection, Intergovernmental relations, Water supply.

Dated: May 13, 1999.

John H. Hankinson, Jr.,

Regional Administrator, Region 4.

For the reasons set out in the preamble, 40 CFR part 147 is proposed to be amended as follows:

PART 147—[AMENDED]

1. The authority citation for part 147 continues to read as follows:

Authority: 42 U. S. C. 300h; and 42 U. S. C. 6901 *et seq.*

Subpart B—Alabama

§ 147.50 [Removed]

2. Section 147.50 is removed.

[FR Doc. 99–12747 Filed 5–18–99; 11:31 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Baird's Sparrow as Threatened With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 90-day finding for a petition to list the Baird's sparrow (*Ammodramus bairdii*) as threatened, and to designate critical habitat, under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial information indicating that listing of this species as threatened may be warranted.

DATES: The finding announced in this document was made on May 13, 1999.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Field Supervisor, North Dakota Ecological Services Field Office, U.S. Fish and Wildlife Service, 1500 East Capitol Avenue, Bismarck, North Dakota 58501. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Al Sapa, at the above address, or telephone (701) 250–4481.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act, requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we are required to promptly initiate a review of the status of the species.

We initiated a status review for the Baird's sparrow when it was categorized as a Category 2 species in the Animal Notice of Review published in the **Federal Register** on November 21, 1991 (56 FR 58804). At that time, a Category 2 species was one that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threat were not available to support a proposed rule. Designation of Category 2 species was discontinued in the February 28, 1996, Notice of Review (61 FR 7596). We completed the Baird's Sparrow Status Assessment and Conservation Plan (Jones and Green 1998) in April 1998. Based on the results of the Assessment, we recommended no change in the status for this species and it remains on our list of Nongame Migratory Bird Species of Management Concern. This designation does not confer legal protection but is intended to stimulate a coordinated effort by Federal, State, and private agencies to develop and implement comprehensive and integrated approaches for management.

On July 1, 1997, we received a petition dated June 26, 1997, from the Biodiversity Legal Foundation, to list the Baird's sparrow (*Ammodramus bairdii*) as threatened, and to designate critical habitat, pursuant to the Act. We acknowledged receipt of the petition on July 23, 1997, and indicated to the petitioner that our Listing Priority Guidance for fiscal year 1997, published in the December 5, 1996, **Federal Register** (61 FR 64475), would preclude working on the 90-day finding at that time. The fiscal year 1997 Guidance designated the processing of listing

petitions as a Tier 3 activity, i.e., of lower priority than the completion of emergency listings (Tier 1) and the processing of pending proposed listings (Tier 2). We indicated that, as these higher-priority activities were accomplished we would proceed with a 90-day finding on the Baird's sparrow petition.

The petitioner requested the current status of its petition in March 1998, and we responded that we were in a position to start responding to petitions, and that we intended to prepare a 90-day finding by June 29, 1998. Subsequently, higher priority listing issues prevented us from meeting that completion date.

The petitioner asserted that historically the Baird's sparrow was abundant and widespread in the northern Great Plains, but that today the species is mainly restricted to small islands of remaining native prairie surrounded by an agricultural mosaic. Also, the petitioner stated that the small remnant breeding populations of the sparrow are threatened by the ongoing loss of suitable grassland habitat, extensive agricultural practices (such as livestock grazing, haying, irrigation, and the use of pesticides), collisions with communication towers, the invasion of exotic species, and fire suppression.

The Baird's sparrow is a grassland specialist endemic to the northern North American prairie. Its behavior and ecology was shaped by the historical conditions of the Great Plains, and the health of its populations are dependent on the conditions of native prairie (Samson and Knopf 1996). The habitat of the Baird's sparrow consists of upland prairies of mixed-grass or tallgrass habitat types. The Baird's sparrow nests in North and South Dakota, Montana, Minnesota, Alberta, Manitoba, and Saskatchewan. Common grasses found in its habitat are *Bouteloua gracilis* (blue grama), *Stipa comata* (needle-and-thread), and *Andropogon scoparius* (little bluestem). In the breeding season Baird's sparrows prefer native grasslands, but they also nest in smaller numbers in hayfields, seeded pastures (Sutter et al. 1995), weedy stubble fields and retired croplands (Kantrud and Kologiski 1983, Stewart 1975, De Smet and Conrad 1989, Davis 1994), wheat fields (Land 1968), and in dry wetland basins (Goossen et al. 1993). The Baird's sparrow winters primarily in northern Mexico, although some individuals may be found in southwestern Texas, southeastern Arizona, and occasionally southern New Mexico (Jones and Green 1998).

The petitioner asserted that mid-grass prairie habitat continues to be converted to cultivation and other uses at an alarming rate. However, there were no recent acreage figures provided to support that argument. The petition recognized that the Baird's sparrow's breeding range included large tracts of U.S. Forest Service, Bureau of Land Management, and other Federal lands on the northern plains, and this provides the potential for implementation of specific management measures to conserve the species.

Estimates of the remaining mixed grass prairie are wide-ranging. Mixed grass prairie has declined 60–99 percent in acreage in the prairie provinces and North Dakota (Sampson and Knopf 1996), with over 90 percent of the grasslands in Canada converted to agriculture. The most conservative estimates in North Dakota are that approximately 8 million acres of the habitat remain (U.S. Geological Survey 1993). Others estimate that as many as 12–15 million acres of the northern mixed grass prairie type still exist in North Dakota (Klopatek et al. 1979). Overall, we believe that current Baird's sparrow population estimates and trends indicate that native prairie acreage in the Northern Great Plains is sufficient to support a stable population. There are significant large tracts of this habitat on Federal land that are managed with light to moderate grazing pressure as a conservation measure for Baird's sparrow.

Population data are unreliable from many parts of the Baird's sparrow range, and conflict in other areas. However, populations are likely to be greater than earlier believed, and remain high in many portions of the range (Jones and Green 1998). The population in North Dakota is estimated to be from 171,000 to 279,000 breeding pairs (Igl and Johnson 1997), based on the most recent North American Breeding Bird Survey (BBS) data. Our analysis indicates that historic population trends have been negative, but populations of the species currently appear to be stable. The BBS data indicate that this sparrow's population declines were persistent and steep (in mean annual percent change per year) in the continental population for the period of 1966–1979 for all areas except Montana (Sauer et al. 1996). However, for the period 1980–1996, with a larger sample size of survey routes, the trends leveled out in most geographic areas. During this period, there was a nonsignificant increase for the entire survey area of 1.1 percent per year, and significant increases in the Glaciated Missouri Plateau region (mainly North Dakota). The average trend over the 30 years (1966–1996) of the BBS shows Baird's sparrow population trends to be stable (Sauer et al. 1996, Jones and Green 1998).

Susceptibility to human disturbance is a factor in Baird's sparrow distribution. Disturbances caused by plowing, brushing, burning, movement of livestock, grazing, haying, and mowing can result in the abandonment of an area and lead to reproductive failure (Jones and Green 1998). However, the species can coexist with light to moderate grazing pressure on native prairie (Cartwright et al. 1937, Lane 1968, Sampson and Knopf 1996) and the currently stable population trend for Baird's sparrow implies that the survival of the species is not threatened by these habitat disturbances at this time.

Predation can be a major cause of reproductive failure in Baird's sparrows (Davis and Sealy in press), as it is with most small birds. Predation frequencies ranged from 26–46 percent for nests in southwestern Manitoba to 50–71 percent in southern Saskatchewan (Davis 1994). Davis and Sealy (in press) reported predation by the striped skunk (*Mephitis mephitis*) and the thirteen-lined ground squirrel (*Spermophilus tridecemlineatus*). Richardson's ground-squirrels (*S. richardsoni*) depredated eggs, nestlings, and fledglings at a site in Alberta (Mahon 1995). Other potential predators include American crow (*Corvus brachyrhyncos*), northern harrier (*Circus cyaneus*), and western plains garter snake (*Thamnophis radix haydeni*) (Davis and Sealy in press).

Baird's sparrow nests are commonly parasitized by brown-headed cowbirds (*Molothrus ater*). Davis and Sealy (in press) found that 36 percent of 74 nests in southwestern Manitoba were parasitized with an average of two cowbirds eggs (range 1–4). Significantly fewer young were fledged from successful parasitized nests than from successful nonparasitized nests, resulting in an average cost of 1.1 Baird's sparrow fledglings per parasitized nest. Egg removal by cowbirds was likely the primary cause of lowered productivity in parasitized nests. These levels of predation and nest parasitism are comparable to other grassland passerine birds, and we find no evidence to indicate that the level of documented predation is a threat to the species based upon its stable population trend.

The Baird's sparrow is protected from take under the Migratory Bird Treaty Act in the United States, the Migratory Bird Convention Act in Canada, and the Convention for the Protection of Migratory Bird and Game Mammals in Mexico. Additionally, the Baird's sparrow is on the Service's list of

Nongame Migratory Bird Species of Management Concern and is the subject of numerous research efforts and conservation actions across its range. We reviewed information during the processing of this petition to indicate that the level of concern generated by these designations has been sufficient to generate heightened research and management interest in the Baird's sparrow. The Service will continue to promote these efforts to improve the biological status of the Baird's sparrow. Our current programs that benefit the Baird's sparrow include grassland easements, technical assistance to ranchers grazing native prairie and research and monitoring of grassland species.

Finding

We reviewed the petition, as well as other available information, published and unpublished studies and reports, and agency files. On the basis of the best scientific and commercial information available, we find the petition does not present substantial information that listing this species may be warranted. While the species has experienced major declines since European settlement of the prairies and the conversion of native prairie to agriculture, population trend data for this species over the last 16 years show their populations are stable. There are an estimated 171,000 to 279,000 pairs of Baird's sparrows in North Dakota (Igl and Johnson 1997). We have found no evidence to suggest that the millions of acres of breeding habitat for this species in North Dakota, Montana, and Canada face immediate threat of conversion from grassland to other agricultural uses. Canada removed the Baird's sparrow from its national list of threatened species in 1997 after a 1994 survey estimated 500,000 to 2 million pairs of Baird's sparrow in Saskatchewan (Davis et al. 1996). The petition provided no evidence to indicate that conditions on the wintering grounds threaten the continued existence of Baird's sparrow. The Baird's sparrow remains a species of special concern and the BBS and other range-wide and local surveys will continue to monitor its status.

References Cited

You may request a complete list of all references cited herein, as well as others, from the Service's North Dakota Field Office (See **ADDRESSES** section).

Author

Michael Olson (see **ADDRESSES** section) prepared this document.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 13, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–12844 Filed 5–20–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 050599A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Experimental Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of experimental fishery proposals; request for comments.

SUMMARY: NMFS announces that the Regional Administrator, Northeast Region, NMFS (Regional Administrator), is considering approval of two experimental fishing proposals. EFPs would allow vessels to conduct operations otherwise restricted by regulations governing the Northeast Multispecies Fishery, and would exempt vessels from days at sea (DAS), mesh sizes, and other gear restrictions. The first experimental fishery proposal would involve fishing for, retention and landing of silver hake (whiting), spiny dogfish, and red hake with small mesh in the Gulf of Maine/Georges Bank Regulated Mesh Area. This experiment was previously approved during the 1998 fishing season and is referred to as the Raised Footrope Whiting Trawl Experimental Fishery (Raised Footrope Trawl Experiment). The requested time period of the Raised Footrope Trawl Experiment would be modified this year taking place from June through August, instead of September through December. The second experimental fishery request is for a supplemental gear testing experiment to support the goals and objectives of the Raised Footrope Trawl Experiment. Regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act provisions require publication of this notification to provide interested parties the opportunity to comment on the proposed experimental fisheries.

DATES: Comments on this notification must be received by June 7, 1999.

ADDRESSES: Comments should be sent to Jon Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope ''Comments on Proposed Experimental Fisheries.''

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: The Massachusetts Division of Marine Fisheries (MADMF) submitted an application on March 31, 1999, to refine the investigations of a previously approved small mesh experimental fishery with these two proposals. The first proposal would require the use of modified trawls (raised footrope) in six distinct areas including all of Cape Cod Bay, areas outside Cape Cod Bay, lower Massachusetts Bay, and southern and western edges of Stellwagen. This would be the third full year that the experimental fishery has operated (1995 and 1996 were pilot studies); whereby, October and November have traditionally been the most active months of participation according to sea sampling data and logbook reporting.

This experiment is designed to assess the effectiveness of a raised footrope small mesh otter trawl in reducing bycatch of regulated multispecies—primarily flatfish and other bottom dwelling species—in the silver hake (whiting) fishery. The experimental area in Cape Cod Bay was identified by the MADMF as an important area for whiting fishing by vessels primarily fishing out of Provincetown, Gloucester, and Chatham, Massachusetts. The experiment has experienced sporadic changes in bycatch which appear to be temporal and site-specific in nature. The proposed experimental fishery would allow MADMF and NMFS to consider new data on the bycatch of regulated multispecies at times not previously sampled, as well as additional information on those areas and times sampled in years past.

The second proposal submitted by MADMF would provide for a supplemental gear testing experiment to support the objectives of the Raised Footrope Trawl Experiment by continuing last year's investigation of various different refinements to the ''sweep-less'' trawl gear. These gear trials will only slightly modify the standard raised footrope design and it is expected that the ''sweepless'' trawl design will mitigate impacts to the habitat and further reduce bycatch of bottom dwelling species.

MADMF expects that 40 vessels will participate in the experimental fishery (4–6 vessels in the supplemental gear experiment), and that enrollment will be established similar to last year; historical participation and previous experience with the raised footope trawl gear operation played a role in the selection process. Further limitations on participation may be necessary depending on logbook compliance or enforcement issues identified through the NMFS review process.

EFPs would be issued to the participating vessels in both experiments in accordance with the conditions stated therein, and will exempt vessels from the mesh size, days-at-sea, and other gear restrictions of the Northeast Multispecies Fishery Management Plan during the specified seasons.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 14, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–12887 Filed 5–20–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 99051126–9126–01; I.D. 042999A]

RIN 0648–AM67

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic States; Dolphin and Wahoo Commercial Fisheries; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This document announces that the South Atlantic Fishery Management Council (South Atlantic Council) is considering additional management measures to limit entry into the commercial fisheries for dolphin (*Coryphaena hippurus*) and wahoo (*Acanthocybium solandri*) in the exclusive economic zone (EEZ) off the South Atlantic states. Possible measures include the establishment of a limited entry program to control participation or effort in the commercial fisheries for dolphin and wahoo. If a limited entry program is established, the South Atlantic Council is considering May 21, 1999, as a possible control date. Consideration of a control date is intended to discourage new entry into the fisheries based on economic speculation during the South Atlantic Council's deliberation on the issues.

DATES: Comments must be submitted by June 21, 1999.

ADDRESSES: Comments should be directed to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306,

Charleston, South Carolina 29407; Fax: 843–769–4520.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727–570–5305.

SUPPLEMENTARY INFORMATION: Dolphin are managed under the Fishery Management Plan (FMP) for the Coastal Migratory Pelagic Resources of the Gulf and South Atlantic (Coastal Pelagics FMP). The Coastal Pelagics FMP was prepared jointly by the Gulf of Mexico Fishery Management Council and the South Atlantic Council, and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

The South Atlantic Council is concerned about the adverse effects of increased harvest of dolphin and wahoo off the South Atlantic states. Available landings estimates indicate that the pelagic longline fleet is now targeting dolphin throughout the South Atlantic EEZ. Commercial landings of South Atlantic wahoo have also recently increased. Consequently, an increasing opportunity exists for localized depletion of the two species, leading to an overfished stock condition and user group conflicts.

Recent constraints on participation in the South Atlantic snapper-grouper and king mackerel commercial fisheries may result in additional entrants into the dolphin and wahoo commercial fisheries. In addition, fishermen displaced from inshore state waters by recent state gear restrictions may wish to enter the dolphin and wahoo commercial fisheries to regain lost income. New entry into these fisheries may be discouraged by establishment of a control date.

Anyone entering the dolphin and wahoo commercial fisheries after May 21, 1999, will not be assured of future access, should a management regime that limits the number of participants in those fisheries be prepared and implemented. Implementation of an effort limitation program would require preparation of a Dolphin-Wahoo FMP and/or an amendment to the Coastal Pelagics FMP, publication of notice of availability of the FMP/amendment with a comment period, publication of a proposed rule with a public comment period, approval of the FMP/amendment, and issuance of a final implementing rule.

Consideration of a control date does not commit the South Atlantic Council or NMFS to any particular management regime or criteria for entry into the dolphin and wahoo commercial fisheries. Fishermen are not guaranteed future participation in these fisheries regardless of their entry date or intensity of participation in the fisheries before or after the control date under consideration. The South Atlantic Council subsequently may choose a different control date or may choose a management regime that does not make use of a control date. The South Atlantic Council may choose to give variably weighted consideration to fishermen active in the fisheries before and after the control date. Other qualifying criteria, such as documentation of landings and sales, may be applied for entry. The South Atlantic Council also may choose to take no further action to control entry or access to the fisheries, in which case the control date may be rescinded.

This advance notice of proposed rulemaking has been determined to be not significant for purposes of E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 14, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 99–12886 Filed 5–20–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 98

Friday, May 21, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, New York State Office.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the New York State NRCS Field Office Technical Guide (FOTG) for review and comment.

SUMMARY: It is the intention of NRCS to issue a new conservation practice standard in its National Handbook of Conservation Practices. This new standard is: Manure Transfer (NY 634).

DATES: Comments will be received on or before June 21, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Richard D. Swenson, State Conservationist, Natural Resources Conservation Service, (NRCS), 441 S. Salina Street, Fifth Floor, Suite 354, Syracuse, New York, 13202–2450.

A copy of this standard is available from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: April 30, 1999.

Melvin Womack,

Deputy State Conservationist, Natural Resources Conservation Service, Syracuse, NY.

[FR Doc. 99–12873 Filed 5–20–99; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Oklahoma

AGENCY: Natural Resources Conservation Service (NRCS) in Oklahoma, U.S. Department of Agriculture.

ACTION: Notice of availability of a proposed change in Section IV of the FOTG of the NRCS in Oklahoma for review and comment.

SUMMARY: It is the intention of NRCS in Oklahoma to issue a new conservation practice standard in Section IV of the FOTG. The standard is Water Well Testing (Code 731).

DATES: Comments will be received for a 30-day period commencing with May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Keith Vaughan, ASTC (Ecological Sciences), Natural Resources Conservation Service (NRCS), 100 USDA, Suite 206, Stillwater, OK 74074–2655. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to Keith.Vaughan@ok.usda.gov.

FOR FURTHER INFORMATION CONTACT: Keith Vaughan, 405–742–1240.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Oklahoma will receive comments relative to the proposed change. Following that period, a determination will be made by the NRCS in Oklahoma regarding disposition of those comments and a final determination of change will be made.

Dated: May 3, 1999.

Ronnie L. Clark,

State Conservationist, Stillwater, Oklahoma.

[FR Doc. 99–12830 Filed 5–20–99; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 21, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a

substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will result in authorizing small entities to furnish the commodities and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Gloves, Patient Examining
6515–01–461–3208
6515–01–461–3209
6515–01–455–5293
6515–01–461–8271
6515–01–455–5281
6515–01–455–2778
6515–01–455–2782
6515–01–461–8414
6515–01–455–2578
6515–01–455–2768
6515–01–455–2759
6515–01–461–8507
NPA: Bosma Industries for the Blind, Inc., Indianapolis, Indiana

Hood, Stockinette
8415–LL–S04–8922
NPA: Columbia Industries, Kennewick, Washington

Service

Janitorial/Custodial
Naval and Marine Corps Readiness Reserve Center
Providence, Rhode Island
NPA: Greater Providence Chapter, Rhode Island Association for Retarded Citizens, Inc., North Providence, Rhode Island

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List:

The following commodities have been proposed for deletion from the Procurement List:

Basin, Wash
6530–01–075–2723
6530–01–166–9035

Cleaning and Degreasing Compounds
6850–01–383–3038
6850–01–383–3042
6850–01–383–3045
6850–01–383–3046
6850–01–383–3047
6850–01–383–3052
6850–01–383–3053
6850–01–383–3054
6850–01–383–3056
6850–01–383–3058
6850–01–383–3059
6850–01–383–3060
6850–01–430–7134
6850–01–430–7135
6850–01–430–7137
6850–01–430–7138
6850–01–430–7139
6850–01–430–7140

Bedspread
7210–00–728–0175
7210–00–728–0187

Mark J. Benedict,

Operations Analyst.

[FR Doc. 99–12888 Filed 5–20–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity and a service previously furnished by such agencies.

EFFECTIVE DATE: June 21, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 6, 1996, August 7, 1998 and February 12, April 2, and 9, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 64666, 63 FR 42365 and 64 FR 7166, 15955 and 17312) of proposed additions to and deletions from the Procurement List:

Additions

The Following Comments Pertain to Water Bag, Nylon Duck

Comments were received from the current contractor for these water bags, a previous contractor, and two Members of Congress on behalf of the previous contractor. The current contractor described the impact on the company which it believed the Procurement List addition would cause. The current contractor has subsequently notified the Committee that it is withdrawing its comments, as the impact is not what was originally anticipated. Consequently, the Committee has concluded that the addition of the bags to the Procurement List will not have a severe adverse impact on the current contractor.

The previous contractor and the Members of Congress writing on its behalf expressed concern over the impact of the Procurement List addition on the previous contractor, and the contractor claimed that the addition would increase the costs of the bags to the Government. The previous contractor has not had a contract for these bags since 1994 and, thus, is not dependent on the business they represent. Moreover, under the competitive procurement system, no contractor is guaranteed a Government contract. Consequently, the previous contractor is objecting to losing the possibility of getting a contract in the future. The Committee does not believe that loss of this possibility, by itself, constitutes severe adverse impact on any contractor. As for the price, the amount the Government will pay has been negotiated with the Government contracting agency, which has concluded that it represents a fair market price as required by the Committee's statute.

The Following Material Pertains to All of the Items Being Added to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Kit, Marine Corps Demolition, Advanced
1375–00–NSH–0001
Water Bag, Nylon Duck
8465–01–321–1678
8465–01–321–1678F

Services

Administrative Services, Department of Veterans Affairs Medical Center, 700 South 19th Street, Birmingham, Alabama

Data Entry
U.S. Department of Housing & Urban Development, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia

Grounds Maintenance at the following locations in El Paso, Texas:
Sequra USAR Center, 301 Ascarate Drive, Dyer USAR Center

Janitorial/Custodial
Dobbins Air Reserve Base, Georgia

Janitorial/Custodial
Naval Reserve Center, 85 Sea Street, Quincy, Massachusetts

Janitorial/Custodial
Sequra USAR Center, 301 Ascarate Drive, El Paso, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodity and service.

3. The action may result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodity and service deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity and service are hereby deleted from the Procurement List:

Commodity

Clamp, Panel 5450–00–297–5271

Service

Janitorial/Custodial
Grenier Field U.S. Army Reserve Center, Manchester, New Hampshire

Mark J. Benedict,

Operations Analyst.

[FR Doc. 99–12889 Filed 5–20–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Addition to the Procurement, List Correction

In the document appearing on page 15955, FR 99–8233, in the issue of April 2, 1999, in the first column, the listing for Administrative Services, U.S. Department of Housing and Urban Development, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia should have been listed as Data Entry and not Administrative Services.

Mark J. Benedict,

Operations Analyst.

[FR Doc. 99–12890 Filed 5–20–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Accuracy and Coverage Evaluation, Independent Listing Operation Activities.

Form Number(s): D–1302, D–1302PR.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 70,513 hours.

Number of Respondents: 2,035,700.

Avg Hours Per Response: 2 minutes.

Needs and Uses: The Bureau of the Census requests approval from the Office of Management and Budget for clearance of the independent listing forms, Form D–1302 and D–1302PR, to be used in the Accuracy and Coverage Evaluation (ACE), Independent listing operation activities in the Census 2000. The ACE is a national survey of sample block clusters within the 50 states, the District of Columbia, and Puerto Rico. The Bureau of the Census developed the ACE approach for measuring coverage of the population in the decennial census. In ACE, we independently count a sample of housing units and the people living in those units, then compare those results to the census. We then use this comparative information to produce final estimates of the coverage for Census 2000. The ACE approach was tested during the Census 2000 Dress Rehearsal in Columbia, South Carolina. The ACE was formerly referred to as the Post-Enumeration Survey (PES) in the Census 2000 Dress Rehearsal.

The Independent Listing Operation is the first step in the ACE process. It will be used to obtain a complete housing unit inventory of all addresses within the Census 2000 ACE sample of block clusters before the Census 2000 enumeration commences. There will be two Independent Listing forms, D–1302 and D–1302PR. The D–1302 is the

English language version of the listing form and will be used in the ACE sample areas except in Puerto Rico. The D–1302PR is the Spanish language version of the listing form and will be used only in the ACE sample areas in Puerto Rico.

The listings will be matched to the address list used in the census; the unmatched cases will be sent to the field for reconciliation during the next phase of the ACE—Housing Unit Follow-up. The forms and procedures to be used in the Housing Unit Follow-up phase of the ACE in the Census 2000 and all subsequent ACE phases will be submitted separately.

Affected Public: Individuals or households.

Frequency: One-time only.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 141, 193, and 221.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 14, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–12820 Filed 5–20–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 12 of the 1996 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 20, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3379, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels each lasting four years. Respondents are interviewed once every four months in monthly rotations. Approximately 37,000 households are in the current panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central ''core'' of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as obtaining information on taxes, the ownership and contributions made to the IRA, Keogh, and 401K plans, examining patterns in respondent work schedules, and child care arrangements. These supplemental questions are included with the core and are referred to as ''topical modules.''

The topical modules for the 1996 Panel Wave 12 collect information about:

- Assets, Liabilities, and Eligibility
- Medical Expenses/Utilization of Health Care—Adult and Children
- Work Related Expenses
- Child Support Paid
- Children's Well-Being

Wave 12 interviews will be conducted from December 1999 through March 2000.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every four years with each panel having a duration of four years in the survey. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of 12 times (12 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample persons (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Persons 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these persons move, they are not followed unless they happen to move along with a Wave 1 sample person.

III. Data

OMB Number: 0607–0813.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 77,700.

Estimated Time Per Response: 30 minutes per person.

Estimated Total Annual Burden Hours: 117,800.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 14, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–12819 Filed 5–20–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–803]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Extruded Rubber Thread From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Eric B. Greynolds, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1775 or (202) 482–6071, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351 (April 1998).

Scope of the Investigation

For purposes of this investigation, the product covered is extruded rubber thread (''ERT'') from Indonesia. ERT is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inches or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter.

ERT is currently classified under subheading 4007.00.00 of the *Harmonized Tariff Schedule* (''HTS''). Although the HTS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On March 26, 1999, the Department of Commerce (''Department'') published the final determination of its antidumping duty investigation of extruded rubber thread from Indonesia. This investigation covers two respondents, P.T. Swasthi Parama Mulya (''Swasthi'') and P.T. Bakrie Rubber Industries (''Bakrie''). *See Notice of Final Determination of Sales at Less than Fair Value: Extruded Rubber Thread from Indonesia,* 64 FR 14690, (March 26, 1999).

Swasthi submitted a ministerial error allegation on April 6, 1999 with respect to the final determination. Based on the analysis of the these ministerial errors made in the final determination, we are amending our final determination (the Department has corrected the program language to convert the foreign price unit of measurement from kilograms to pounds; revised an overstatement of the marine insurance premium in the rebate calculation; and corrected a ministerial error in the comparison of U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade). For detailed information on the ministerial errors, *see* Memorandum to the Deputy Assistant Secretary for AD/CVD Enforcement II from David Mueller, Director, Office of AD/CVD Enforcement dated April 19, 1999, concerning Amendment to Notice of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Indonesia, public version, on file in the Central Record Unit, Room B–099, Main Commerce Building. Accordingly, we are amending the final determination, pursuant to 19 CFR 351.224(e).

On May 7, 1999, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (''ITC'') notified the Department that a U.S industry is ''threatened with material injury,'' within the meaning of section 735(b)(1)(A)(ii) of the Act, by reason of imports of ERT from Indonesia. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act, that, but for the suspension of liquidation of entries of the subject merchandise, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative ''but for'' finding under section 735(b)(4)(B) of the Act, the ''Special Rule'' provision of section 736(b)(2) of the Act applies. Therefore, only unliquidated entries of ERT from Indonesia, entered or withdrawn from warehouse, for consumption on or after May 12, 1999, the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register** (64 FR 25515), are liable for the assessment of antidumping duties. Accordingly, the Department will direct the Customs Service to terminate the suspension of liquidation for entries of ERT from Indonesia entered, or withdrawn from warehouse, for consumption before May 12, 1999, the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

Therefore, in accordance with section 736 of the Act, the Department will direct the United States Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price and constructed export price of the merchandise for all relevant entries of extruded rubber thread from Indonesia. Subject merchandise from Indonesia which is entered or withdrawn from warehouse, for consumption on or after May 12, 1999, the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, shall be subject to the assessment of antidumping duties under section 731 of the Act, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before May 12, 1999.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the cash deposits listed below for the subject merchandise. The All Others rate applies to all exporters of subject merchandise not specifically listed below.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
P.T. Bakrie Rubber Industry	28.29
P.T. Swasthi Parama Mulya	5.13

Exporter/manufacturer	Weighted-average margin percentage
All Others	24.00

This notice constitutes the antidumping duty order with respect to extruded rubber thread from Indonesia, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: May 17, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–13071 Filed 5–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808, A–122–830, A–475–822, A–580–831, A–791–805, A–583–830]

Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty orders.

EFFECTIVE DATE: May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Robert James at (202) 482–5222 or John Kugelman at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (April 1, 1998).

Scope of the Orders

The product covered by these orders is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to these orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of the orders is dispositive.

Antidumping Duty Orders

In accordance with section 735(a) of the Tariff Act the Department made its final determinations that stainless steel plate in coils from Belgium, Canada, Italy, the Republic of Korea (Korea), South Africa and Taiwan is being sold at less than fair value (see Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils, 64 FR 15443 through 15509, March 31, 1999). On May 4, 1999, the International Trade Commission (the Commission) notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Belgium, Canada, Italy, Korea, South Africa and Taiwan. In its final determination, however, the Commission determined that two domestic like products exist for the merchandise covered by the Department's investigation: (i) certain cold-rolled stainless steel plate in coils, as defined above, and (ii) all other stainless steel plate in coils not specifically excluded. The Commission determined pursuant to section 735(b)(1) that a domestic industry in the United States is not materially injured or threatened with material injury by reason of imports of the noted cold-rolled stainless steel plate in coils from Belgium and Canada and that imports of the noted cold-rolled stainless steel plate in coils from Italy, Korea, South Africa and Taiwan were ''negligible.'' Therefore, the Commission's affirmative determination of material injury covered all stainless steel plate in coils other than that specifically excluded under the ''Scope of the Orders'' section above. Accordingly, the scope of the antidumping duty orders has been amended as described above to reflect the Commission's distinction between the cold-rolled stainless steel plate in coils as defined above and all other stainless steel plate in coils. However, because the data as reported by respondents do not permit a distinction between the cold-rolled stainless steel plate, as defined by the Commission, and all other stainless steel plate in coils, we are not amending the final determinations to exclude any sales of the cold-rolled products.

In accordance with section 736(a)(1) of the Tariff Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa and Taiwan. These antidumping duties will be assessed on all unliquidated entries of stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa and Taiwan entered, or withdrawn from warehouse, for consumption on or after November

4, 1998, the date on which the Department published its notices of preliminary determination in the **Federal Register** (63 FR 59524 through 59544). Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''All Others'' rates apply to all exporters of subject stainless steel plate in coils not specifically listed. Imports of the noted cold-rolled stainless steel plate in coils, as defined above under ''Scope of the Orders,'' will not be covered by these orders. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Cash deposit rate (Percent)
Belgium:	
ALZ, N.V.	9.86
All Others	9.86
Canada:	
Atlas Stainless Steel (Sammi Atlas)	15.35
All Others	11.10
Italy:	
Acciai Speciali Terni SpA (AST)	45.09
All Others	39.69
Republic of Korea:	
Pohang Iron & Steel Co., Ltd	16.26
All Others	16.26
South Africa:	
Columbus Stainless	[1] 37.77
All Others	[1] 37.771
Taiwan:	
Yieh United Steel Corporation (YUSCO)	8.02
YUSCO/Ta Chen	10.20
All Others	7.39

[1] The Department's final determination noted that in accordance with section 772(c)(1)(C) of the Tariff Act Columbus' weighted-average margin would be reduced by 3.84 percent to account for export subsidies found in the concurrent countervailing duty investigation (See Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From South Africa, 63 FR 15553, March 31, 1999). The rate given in the final determination of sales at less than fair value was, accordingly, 37.79 percent. However, in response to an allegation of ministerial error in calculating the export subsidy the Department amended the export subsidy rate to 3.86 percent. See Memorandum to Bernard Carreau, ''Ministerial Error Allegations * * * in the Final Determination of the Countervailing Duty Investigation of Certain Stainless Steel Wire Rod [sic] from South Africa, April 30, 1999. Accordingly, we have reduced the cash deposit rates for South Africa to 37.77 percent.

This notice constitutes the antidumping duty orders with respect to certain stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa and Taiwan. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: May 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–12892 Filed 5–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042699C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of cancellation of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) has cancelled the public meeting of their Ad-Hoc Allocation Committee (Committee) that was scheduled for Tuesday, May 25, 1999 through Wednesday, May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The initial notice published in the **Federal Register** on May 3, 1999 (64 FR 23606).

Dated: May 14, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–12862 Filed 5–18–99; 1:48 pm]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

May 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used in 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67046, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on May 21, 1999, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
200	716,534 kilograms.
336	173,745 dozen.

Category	Adjusted twelve-month limit [1]
338/339	2,333,946 dozen of which not more than 1,718,834 dozen shall be in Categories 338–S/339–S [2].
340	777,301 dozen of which not more than 396,662 dozen shall be in Category 340–Z [3].
347/348	2,276,277 dozen.
350	163,757 dozen.
351	548,402 dozen.
352	1,611,055 dozen.
359–C [4]	610,292 kilograms.
361	4,217,058 numbers.
362	7,103,037 numbers.
369–D [5]	4,695,680 kilograms.
410	999,047 square meters of which not more than 800,845 square meters shall be in Category 410–A [6] and not more than 792,916 square meters shall be in Category 410–B [7].
433	20,765 dozen.
443	127,250 numbers.
445/446	286,244 dozen.
447	68,509 dozen.
638/639	2,385,205 dozen.
640	1,345,178 dozen.
642	337,461 dozen.
644/844	3,666,745 numbers.
647	1,524,155 dozen.
649	936,677 dozen.
651	762,293 dozen of which not more than 137,589 dozen shall be in Category 651–B [8].
659–S [9]	606,619 kilograms.
666	3,549,880 kilograms of which not more than 1,287,016 kilograms shall be in Category 666–C [10].
670–L [11]	16,144,100 kilograms.
836	281,551 dozen.
840	473,895 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[5] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[6] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[7] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[8] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 666-C: only HTS number 6303.92.2000.

[11] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–12897 Filed 5–20–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Romania

May 17, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryover, carryforward, and recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67051, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 17, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the period which began on January 1, 1999 and extends through December 31, 1999.

Effective on May 21, 1999, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
315	3,575,141 square meters.
410	99,740 square meters.
433/434	11,679 dozen.
435	11,439 dozen.
442	14,185 dozen.
443	95,050 numbers.
444	53,165 numbers.
447/448	30,096 dozen.

Category	Adjusted limit [1]
647/648	215,672 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–12896 Filed 5–20–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposal To List Additional Contract Months in the CME Russian Ruble Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposal to list new months in a commodity futures contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has submitted a proposal to list additional contract months in the CME Russian Ruble Futures Contract. Under the proposal, the CME would, as is the case with the currently listed June 1999 contract month, base the cash settlement price on two surveys performed by the CME clearing house at random times on the last day of trading.

The Acting Director of the Division of Economic Analysis (Division), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before June 7, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposal to list additional contract months in the CME Russian Ruble futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Michael Penick of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5279. Facsimile number: (202) 418–5527. Electronic mail: mpenick@cftc.gov.

SUPPLEMENTARY INFORMATION: On October 6, 1998, the Commission approved the suspension of listing of new contract months in the Russian ruble futures contract. In a letter to the CME dated December 9, 1998, the Commission approved proposed amendments to the cash settlement procedure of the Russian ruble futures contract and notified the CME that it was approving those proposed amendments for application to existing contract months only. The Commission also notified the CME in that letter that the CME must submit any proposal to list additional contract months pursuant to Commission Regulation 1.41(b) rather than the expedited procedure of Regulation 1.41(l).[1]

Under the CME's current cash settlement procedure, as approved by the Commission on December 9, 1998 for months listed through June 1999, the CME performs two surveys of financial institutions at randomly selected times during MICEX's afternoon System for Electronic Trading (SELT) session for transactions between commercial banks (currently conducted between 12 noon and 4:30 p.m. Moscow time) on each Moscow business day.[2] The final settlement price is the reciprocal of the average of the two rubles-per-dollar exchange rates calculated from the two surveys on the last trading day.

During each survey, the CME asks participants for two separate rubles per dollar exchange rates as well as an overnight interbank ruble interest rate. Those two rubles per dollar exchange rates are a ''today rate'' (the exchange rate for same-day settlement) and a ''tomorrow rate'' (the exchange rate for settlement on the next Moscow business day).[3] In its calculation of the final settlement price, the CME uses the today rate from each participant that provides a today rate. If any participant provides a tomorrow rate and overnight interest rate, but not a today rate, the CME calculates an ''implied today rate'' for such participants. The implied today rate is calculated using the interest rate parity relation based on the tomorrow rate, the overnight ruble interest rate, and the federal funds overnight U.S. dollar interest rate.[4] Thus, the result of any single survey (and, thus, the cash settlement price) could consist of a mixture of actual and implied today rates. In practice, given that trading for same day settlement is not permitted in the MICEX afternoon session, past cash settlement prices based on this procedure have consisted entirely of implied today rates.

In the event that the CME is unable to complete both daily surveys on the last trading day, the CME calculates the final settlement price based on two surveys, performed under the same procedures, conducted on the Moscow business day following the last trading day. If the CME is also unable to complete two surveys on the second day, then the final settlement price is based on the survey results from the most recent business day prior to the last trading day on which two surveys were successfully completed.

The CME proposes to implement the proposal to list additional contract months shortly after receipt of Commission approval. The CME characterized the Russian ruble contract as ''an important hedging mechanism'' and stated that, without additional contract months, the ''international marketplace will lose the premier tool for managing Russian ruble vs. U.S. dollar price risk.'' The CME also affirmed that any basis risk that may be associated with positions in the ruble contract is less than the risk exposure that would be faced by hedgers in the absence of the ruble contract, since there is no other viable means to hedge ruble positions.

Moreover, with respect to susceptibility to manipulation, the CME stated in its submission that since the events that occurred last summer, ''the Russian economy has stabilized and is taking steps to recovery.'' The CME noted that real consumer spending and industrial production have increased, while monthly inflation rates have decreased. In addition, the CME cited the Russian Finance Ministry claim that

[1] Commission Regulation 1.41(l) provides that an exchange proposal to list additional contract months in a futures or option contract will be deemed approved 10 days after receipt by the Commission if it does not provide for the listing of a contract month outside the currently established cycle of contract months.

[2] MICEX currently runs two daily trading sessions—a morning session for importers and exporters and an afternoon session for transactions between commercial banks.

[3] At the afternoon MICEX session, trading is currently allowed only for settlement on the next Moscow business day.

[4] In this case, the tomorrow rate and overnight ruble interest rate used are average rates calculated from the daily survey results. The overnight federal funds rate is obtained from Telerate.

wage and pension arrears have been reduced and the government has paid all federal wage arrears. Moreover, according to the CME, Russia has reached agreements with the IMF and World Bank that would provide Russia with access to additional loans and the ability to negotiate with creditors to restructure existing debts. Further, Russia has restructured most of its domestic debt which had been frozen in August 1998.

The CME further noted that its CME/EMTA reference rate survey is widely accepted in the cash market. It was noted that the results of the survey, which is conducted daily, has been accepted as a rate source for non-deliverable forward Russian ruble-US Dollar transactions. That rate also has been approved by the Emerging Markets Traders Association, the Foreign Exchange Committee, and the International Swaps Dealers Association for settlement of U.S. dollar/Russian ruble transactions in the spot market. Thus, according to the CME, the CME/EMTA reference rate has become the de facto price discovery mechanism for the Russian ruble market. Moreover, the CME noted that the CME/EMTA reference rate survey was used successfully to cash settle the October, November, and December 1998 futures contracts and the March 1999 futures contract. Moreover, on each of those cash settlement days, at least eight survey participants provided quotes, consistent with the CME's existing contract terms and conditions regarding final cash settlement survey.

The Division requests comment on the proposal to list additional contract months. The Division specifically requests comment on whether the survey procedure has resulted, and will continue to result, in a cash settlement price that is reflective of the underlying cash market and otherwise meets the standards of the Commission's Guideline No. 1.[5] In that regard, the Division notes that the CME survey procedure is designed to obtain an exchange rate for same-day settlement during the afternoon MICEX session but that trading for same-day settlement is not currently permitted during that MICEX session. In its December 9, 1998 letter to the CME, the Commission approved the use of a today rate to settle existing contract months, in part because there were indications that futures prices in those contract months were based on traders' expectations that the cash settlement price ultimately would be based on a today rate. The Division now requests comment on the appropriateness of using an implied today rate for newly listed months. The Division also requests comment on whether the CME procedure will continue to result in a cash settlement price that is not readily susceptible to manipulation or distortion in light of the degree of liquidity of the Russian ruble market and the restrictions on currency trading in Russia. Specifically, will the procedures used by the CME, including setting the cash settlement price based on two surveys conducted at random times, tend to prevent market participants from influencing the cash settlement price? Finally, in the current environment and given the proposed cash settlement provisions, can the Russian ruble contract be used for hedging or price discovery?

The proposal was submitted to the Commission under the Commission's 45-day Fast Track procedures of Commission Regulation 1.41(b)(2). In view of the limited review period under the Fast Track procedures, the Division has determined to publish for public comment notice of the proposal for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the proposal will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581. Copies of the proposal can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposal, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581 by the specified date.

[5] The Commission's Guideline No. 1 (17 CFR part 5, Appendix A, section (a)(2)(iii)) requires, for cash settled contracts, that the cash price series must be reflective of the underlying cash market and be reliable, acceptable, publicly available, and timely and not readily susceptible to manipulation.

Issued in Washington, DC, on May 17, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–12879 Filed 5–20–99; 8:45; am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs.

ACTION: Notice

In accordance with Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (Health Affairs) announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received July 20, 1999.

ADDRESSES: Written comments and recommendations on the information collection should be sent to Office of the Assistant Secretary of Defense (Health Affairs) TRICARE Management Activity, Skyline Five, Suite 810, 5111 Leesburg Pike, Falls Church, Virginia 22041–3206.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call Michael Talisnik, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity at (703) 681–1752.

Title; Associated Form; and OMB Number: TRICARE Enrollment Application Form, OMB No. 0720–0008.

Needs and Uses: The collection instrument serves as an application form for enrollment in the TRICARE Health Care Delivery Program established in accordance with 10 USC 1099. The information collected hereby

provides the private Third Party Administrator, contracted to provide administrative support services, with necessary data to determine beneficiary eligibility, other health insurance liability, premium payment, and to identify the selection of a health care option.

Affected Public: Individuals or household.

Annual Burden Hours: 75,000.

Number of Respondents: 300,000.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Department established TRICARE to provide for a more cost effective program for the delivery of health care services and to improve the quality of and access to health care services. In order to carry out this program, it is necessary that certain beneficiaries electing to enroll in the TRICARE Prime option complete an enrollment form. Completion of the enrollment form is an essential element of the TRICARE program.

Dated: May 14, 1999.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–12802 Filed 5–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, (1998 ed.) [MCM]. The proposed changes are the 1999 draft annual review required by the MCM and DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Miliary Justice,'' May 8, 1996. The proposed changes concern the rules of procedure and evidence applicable in trials by courts-martial and the punitive articles describing offenses. More specifically, the proposed changes would: (1) make a technical correction to a Rule for Courts-Martial (R.C.M.) reference; (2) clarify the rights of victims to be present at courts-martial; (3) raise the monetary amount affecting maximum punishments for various offenses; (4) provide additional guidance regarding the charging of unauthorized credit. debit, or electronic transactions; (5) add firearm or explosive as additional criterion which would authorize greater punishment under Article 103, captured or abandoned property; and (6) delete part of the explanation of false official statement.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon,'' May 21, 1964, and do not constitute the official position of the Department of Defense, Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 8, 1996. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law or by any party against the United States, its agencies, its officers, or any person.

ADDRESSES: Comments on the proposed change should be sent to LtCol Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000.

DATES: Comments on the proposed changes must be received no later than August 4, 1999, for consideration by the JSC.

FOR FURTHER INFORMATION CONTACT: LtCol Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000, (202) 767–1539; FAX (202) 404–8755.

The full text of the affected sections follows:

R.C.M. 1305(d)(2) is amended to read as follows:

(2) Forwarding to the convening authority. The original and one copy of the record of trial shall be forwarded to the convening authority after compliance with subsection (d)(1) of this rule.''

R.C.M. 1305(d). The Analysis to R.C.M. 1305(d) is deleted.

R.C.M. 1305(e). The Analysis to R.C.M. 1305(e) is amended as follows:

''(d) Forwarding copies of the record. Subsection (1) is based on Article 60(b)(2). Subsection (2) is based on the third paragraph 91c of MCM, 1969 (Rev.). Subsection (3) is self-explanatory.

1999 Amendment: The internal subsection reference in subsection (d)(2) was corrected to reflect the 1995 change which redesignated R.C.M. 1305(e) as R.C.M. 1305(d)''

M.R.E. 615 is amended to read as follows: ''Rule 615. Exclusion of witness.

At the request of the prosecution of defense the military judge shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and the military judge may make the order sua sponte. This rule does not authorize exclusion of (1) the accused, or (2) a member of an armed service or an employee of the United States designated as representative of the United States by the trial counsel, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's case, or (4) a person authorized by statute to be present at courts-martial, or (5) any victim of an offense from the trial of an accused for that offense because such victim may testify or present any information in relation to the sentence or that offense during the presentencing proceedings.''

The Analysis accompanying M.R.E. 615 is amended by inserting the following at the end thereof:

''1999 Amendment: These changes are intended to extend to victims at courts-martial the same rights granted to victims by The Victims' Rights and Restitution Act of 1990, 42 U.S.C. 10606(b)(4), giving crime victims ''the right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial,'' and The Victim Rights Clarification Act of 1997, 18 U.S.C. 3510, which is restated in subsection (5). For the purposes of this rule, the term ''victim'' includes all persons defined as victims in 42 U.S.C. 10607(e)(2), which means ''a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including—(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and (B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or decreased, one of the following (in order of preference): (i) A spouse; (ii) a legal guardian; (iii) a parent; (iv) a child; (v) a sibling; (vi) another family member; or (vii) another person designated by the court.'' The victim's right to remain in the courtroom remains subject to other rules, such as those regarding classified information, witness deportment, and conduct in the courtroom. Subsection (4) is intended to

capture only those statutes applicable to courts-martial.''

Paragraphs 32e, 33e, 46e, 49e, 52e, 58e, 78e, and 106e, Part IV, MCM, ''Punitive Articles'' are amended by substituting the value of ''$500.00'' in lieu of ''$100.00'' in all places the value appears.

The Analysis accompanying paragraph 32(e) in Appendix 23, MCM is amended by inserting the following at the end thereof:

''1999 Amendment: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. See generally, the American Law Institute Model Penal Code, (1980), § 233.1 (suggesting $500 as the value). Although the monetary amount effecting punishment in 18 U.S.C. 1361, Government property or contracts, and 18 U.S.C. 641, Public money, property or records, was increased from $100 to $1000 pursuant to the Economic Espionage Act of 1996, Public Law 104–294, 11 Oct 96, a value of $500 was chosen to maintain deterrence, simplicity and uniformity for the manual's property offenses.''

The Analysis accompanying paragraph 33(e) in Appendix 23, MCM is amended by inserting the following at the end thereof:

''1999 Amendment: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. See generally, the American Law Institute Model Penal Code, (1980), § 223.1 (suggesting $500 as the value).''

The Analysis accompanying paragraph 46(e) in Appendix 23, MCM is amended by inserting the following at the end thereof.

''1999 Amendment: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. See generally, the American Law Institute Model Penal Code, (1980), § 223.1 (suggesting $500 as the value). Although the monetary amount effecting punishment in 18 U.S.C. 1361, Government property or contracts, and 18 U.S.C. 641, Public money, property or records, was increased from $100 to $1000 pursuant to the Economic Espionage Act of 1996, Public Law 104–294, 11 Oct 96, a value of $500 was chosen to maintain deterrence, simplicity and uniformity for the manual's property offenses.''

The Analysis accompanying paragraph 49(e) in Appendix 23, MCM is amended by inserting the following at the end thereof:

''1999 Amendment: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount of $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. See generally, the American Law Institute Model Penal Code, (1980), § 223.1 (suggesting $500 as the value).''

The Analysis accompanying paragraph 52(e) in Appendix 23, MCM is amended by inserting the following at the end thereof:

''1999 Amendment: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. See generally, the American Law Institute Model Penal Code, (1980), § 223.1 (suggesting $500 as the value). A value of $500 was chosen to maintain deterrence, simplicity and uniformity for the manual's property offenses. 18 U.S.C. 81, Arson within special maritime and territorial jurisdiction, no longer grades the offense on the basis of value.''

The Analysis accompany paragraph 58(e) in Appendix 23, MCM is amended by inserting the following at the end thereof:

''1999 Amendment: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. See generally, the American Law Institute Model Penal Code, (1980), § 223.1 (suggesting $500 as the value).''

The Analysis accompanying paragraph 78(e) in Appendix 23, MCM is amended by inserting the following at the end thereof.

''1999 Amendment: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. See generally, the American Law Institute Model Penal Code, (1980), § 223.1 (suggesting $500 as the value).''

The Analysis accompanying paragraph 106(e) in Appendix 23, MCM is amended by inserting the following at the end thereof:

''1999 Amendment: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. See generally, the American Law Institute Model Penal Code, (1980), § 223.1 (suggesting $500 as the value).''

Paragraph 27e(1)(a), Part IV, MCM, ''Punitive Articles'' is amended to read as follows:

''(a) of a value of $500.00 or less. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.''

Paragraph 27e(1)(b), Part IV, MCM, ''Punitive Articles'' is amended to read as follows:

''(b) of a value of $500.00 or any firearm or explosive. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.''

The Analysis accompanying paragraph 27(e) in Appendix 23, MCM is amended by inserting the following at the end thereof:

''1999 Amendment: The monetary amount affecting the maximum punishments has been revised from $100 to $500 to account for inflation. The last change was in 1969 raising the amount to $100. The value has also been readjusted to realign it more closely with the division between felony and misdemeanor penalties in civilian jurisdictions. See generally, the American Law Institute Model Penal Code, (1980), § 223.1 1 (suggesting $500 as the value). The amendment also adds the phrase ''or any firearm or explosive'' as an additional criterion. This is because, regardless of the intrinsic value of such items, the threat to the community is substantial when such

items are wrongfully bought, sold, traded, dealt in or disposed.''

Paragrahp 27f(3) Part IV, MCM, ''Punitive Articles'' is amended to read as follows:

''(3) Dealing in captured or abandoned property.

In that ____ (personal jurisdiction data), did, (at/on board-location), on or about ____ 19____, (buy) (sell) (trade) (deal in) (dispose of) (____) certain (captured) (abandoned) property, to wit:____, ((a firearm) (an explosive)), of a value of (about) $____, thereby (receiving (expecting) a (profit) (benefit) (advantage) to (himself/herself) (____, his/her accomplice) (____, his/her brother) (____).''

Paragraph 31c(6), Part IV, MCM, ''Punitive Articles'' is deleted.

The Analysis accompanying paragraph 31(c)(6) in Appendix 23, MCM is deleted and replaced with the following:

''1999 Amendment: Subparagraph c(6), ''Statements made during an interrogation'' was removed in light of *United States* v. *Solis,* 45 M.J. 31 (CAAF 1997).''

Paragraph 46c(1)(h), Part IV, MCM, ''punitive Articles'' is amended by creating the following new subparagraph (vi) as follows:

(vi) Credit, Debit, and Electronic Transactions. Wrongfully engaging in a credit, debit, or electronic transaction to obtain goods or money is an obtaining-type larceny by false pretense. Such use to obtain goods is usually a larceny of those goods from the merchant offering them. Such use to obtain money or a negotiable instrument (e.g. withdrawing cash from an automated teller or a cash advance from a bank) is usually a larceny of money from the entity presenting the money or a negotiable instrument. For the purpose of this section, the term ''credit, debit, or electronic transaction'' includes the use of an instrument or device, whether known as a credit card, debit card, automated teller machine (ATM) card or by any other name, including access devices such as code, account number, electronic serial number or personal identification number, issued for the use in obtaining money, goods, or anything else of value.''

The Analysis accompanying paragraph 46(c) in Appendix 23, MCM is amended by inserting the following at the end thereof:

''1999 Amendment: Subparagraph c(1)(h)(vi) is new. It was added to provide guidance on how unauthorized credit, debit, or electronic transactions should usually be charged. See *United States* v. *Duncan*, 30 M.J. 1284 (N.M.C.M.R. 1990) citing *United States* v. *Jones,* 29 C.M.R. 651 (A.B.R. 1960), petition denied, 30 C.M.R. 417 (C.M.A. 1960) regarding thefts from ATM machines. Alternatives charging theories are also available, *see United States* v. *Ragins*, 11 M.J. 42 (C.M.A. 1981); *United States* v. *Leslie*, 13 M.J. 170 (C.M.A. 1982); *United States* v. *Christy*, 18 M.J. 688 (N.M.C.M.R. 1984); and *United States* v. *Schaper*, 42 M.J. 737 (A.F.Ct.CrimApp. 1995) The key under Article 121 is that the accused wrongfully obtained goods or money from a person or entity with a superior possessory interest.''

Dated: May 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–12805 Filed 5–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of the Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATE: 25 May 1999 (0800 to 1600).

ADDRESSES: The Defense Intelligence Agency, 3100 Clarendon Blvd., Arlington, VA 22201–5300.

DATE: 26 May 1999 (0800 to 1600).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Bvd., Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secreary, DIA Science and Technology Advisory Board, Washington, DC. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: May 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–12800 Filed 5–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 24 May 1999 (900 am to 1600 pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328, (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: May 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–12801 Filed 5–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice of cancellation.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), cancellation of the announcement is made of the following Committee meeting:

Date of meeting: June 16 and June 17, 1999 from 0830 to 1700.

Place: National Rural Electric Cooperative Association, 4301 Wilson Boulevard, Conference Center Room 1, Arlington, VA.

For further information contact: Ms. Amy Kelly, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2124.

Dated: May 17, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–12804 Filed 5–20–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 20, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat—Sherrill@ed.gov,* or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 17, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: Extension.

Title: Evaluation of School-to-Work Implementation.

Frequency: Annually.

Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,221

Burden Hours: 36,542

Abstract: This congressionally mandated five year study examines the implementation of School-to-Work programs in states and local communities. The evaluation involves surveys of local STW partnerships, in-depth case studies in eight states and 40 communities, and study of students' experience in high school and postsecondary education.

[FR Doc. 99–12831 Filed 5–20–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4652–001, et al.]

Boralex Stratton Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 12, 1999.

Take notice that the following filings have been made with the Commission:

1. Boralex Stratton Energy, Inc.

[Docket No. ER98–4652–001]

Take notice that on May 5, 1999, Boralex Stratton Energy, Inc., tendered for filing a notice of change in status in the above-referenced docket.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Appalachian Power Company

[Docket Nos. ER92–323–003 and ER92–324–003]

Take notice that on May 5, 1999, Appalachian Power Company (APCo), tendered for filing its compliance filing in the above-referenced dockets, pursuant to the Commission's April 5, 1999, Opinion and Order Denying Rehearing and its June 5, 1998 Opinion and Order on Initial Decision.

Copies of the filing were served upon APCo's jurisdictional customers, the Tennessee Public Service Commission, the Virginia State Corporation Commission, the Public Service Commission of West Virginia and all parties of record.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Green Mountain Energy Resources L.L.C.

[Docket No. ER99–2489–000]

Take notice that on May 5, 1999, Green Mountain Energy Resources L.L.C. (Green Mountain Energy), tendered for filing an amendment to its April 14, 1999, Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Eastern Edison Company

[Docket No. ER99–2814–000]

Take notice that on May 5, 1999, Eastern Edison Company (EECO), tendered for filing an executed Interconnection Agreement between itself and Browning Ferris Gas Services, Incorporated. (BFGSI). The

Interconnection Agreement establishes the requirements, terms and conditions for EECO to complete system upgrades which will enable BFGSI to operate in parallel with the EECO electrical system.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Blackstone Valley Electric Co.

[Docket No. ER99–2815–000]

Take notice that on May 5, 1999, Blackstone Valley Electric Company (Blackstone), tendered for filing an executed Related Facilities Agreement between itself and ANP Blackstone Energy Company (ANP). The Related Facilities Agreement is to establish the requirements, terms and conditions for Blackstone to complete transmission upgrades which will enable ANP to operate in parallel with the Blackstone electrical system.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER99–2816–000]

Take notice that on May 5, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively the Entergy Operating Companies), tendered for filing revised Exhibit B to Attachment A of the Network Integration Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and the Cajun Electric Power Cooperative, Inc.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. UGI Development Company

[Docket No. ER99–2817–000]

Take notice that on May 5, 1999, UGI Development Company tendered for filing an application for authorization to sell capacity and energy at market-based rates and for certain waivers of the Commission's filing and reporting requirements.

UGI Developments requests waiver of the 60-day notice requirement to permit UGI Development's Rate Schedule to become effective as of June 1, 1999.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. South Carolina Electric & Gas Company

[Docket No. ER99–2818–000]

Take notice that on May 4, 1999, South Carolina Electric & Gas Company tendered for filing a report that summarizes transactions during the three months ended March 31, 1999, pursuant to the Market-Based Tariff accepted by the Commission in Docket Nos. ER96–1085–000 and ER96–3073–000.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER99–2820–000]

Take notice that on May 5, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Geysers Power Company, LLC (Geysers Power) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Geysers Power and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of April 27, 1999.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER99–2821–000]

Take notice that on May 5, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Geysers Power Company, LLC (Geysers Power), for acceptance by the Commission.

The ISO states that this filing has been served on Geysers Power and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of April 27, 1999.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Green Power Partners I LLC

[Docket No. ER99–2822–000]

Take notice that on May 5, 1999, Green Power Partners I LLC (Green Power Partners), tendered for filing an Application for Order Accepting Initial Rate Schedules and Granting Waivers and Blanket Authority, to become effective June 15, 1999.

The proposed tariffs provide the terms and conditions pursuant to which Green Power Partners will sell electric power at negotiated market-based rates (Rate Schedule FERC No. 1) and make transmission capacity available for sale, assignment, or transfer (Rate Schedule FERC No. 2).

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Nevada Power Company

[Docket No. ER99–2823–000]

Take notice that on May 4, 1999, Nevada Power Company (Nevada Power), tendered for filing Amendment No. 1 to the 230kV Facilities Interconnection Agreement between Nevada Power Company and El Dorado Energy, L.L.C. (EDE).

The effective date of Amendment No. 1 shall be as of the execution date of April 19, 1999 and shall remain in full force and effect currently with the Agreement.

In addition to the Parties to this Amendment, copies of this filing have also been provided to the Public Utilities Commission of Nevada and the Utility Consumer's Advocate.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Central Vermont Public Service Corporation

[Docket No. ER99–2824–000]

Take notice that on May 4, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Citizens Power Sales under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on May 1, 1999.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–12847 Filed 5–20–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–99–000, et al.]

Central Piedra Buena S.A., et al.; Electric Rate and Corporate Regulation Filings

May 10, 1999.

Take notice that the following filings have been made with the Commission:

1. Central Piedra Buena S.A.

[Docket No. EG99–99–000]

Take notice that on May 4, 1999, Central Piedra Buena S.A. (Applicant), Av. Alicia Moreau de Justo 240, 3 Piso, Buenos Aires, Argentina 1107, filed with the Federal Energy Regulatory Commission an amended application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The amended application corrects the information as set forth in the application originally filed on March 23, 1999, by Applicant.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

2. New England Power Company, Massachusetts Electric Company, The Narragansett Electric Company, New England Electric Transmission Corporation, New England Hydro-Transmission Corporation, New England Hydro-Transmission Electric Company, Inc., AllEnergy Marketing Company, L.L.C., Montaup Electric Company, Blackstone Valley Electric Company, Eastern Edison Company, Newport Electric Corporation, and Research Drive LLC

[Docket No. EC99–70–000]

Take notice that on May 5, 1999, New England Power Company (NEP) and its affiliates holding jurisdictional assets (Massachusetts Electric Company, The Narragansett Electric Company, New England Electric Transmission Corporation, New England Hydro-Transmission Corporation, New England Hydro-Transmission Electric Company, Inc., and AllEnergy Marketing Company, L.L.C.) (collectively, the NEES Companies), Montaup Electric Company and its affiliates holding jurisdictional assets (Blackstone Valley Electric Company, Eastern Edison Company, Newport Electric Corporation) (collectively, the EUA Companies), and Research Drive LLC submitted for filing an application under Section 203 of the Federal Power Act (16 U.S.C. 824b) and Part 33 of the Commission's Regulations (18 CFR 33.1 *et seq.*) seeking the Commission's approval and related authorizations to effectuate a merger, the result of which would be to merge New England Electric System (NEES), the parent company of the NEES Companies, with the Eastern Utilities Associates (EUA), the parent company of the EUA Companies. Through the Merger, EUA will become a wholly-owned subsidiary of NEES, and will subsequently be consolidated into NEES. In addition, the Application seeks the Commission's approval and authorization for the subsequent mergers and consolidations of the complementary operating companies of the two systems that hold jurisdictional assets. Finally, the Application requests approval, if required, of the acquisition by The National Grid Group plc (National Grid) of the EUA Companies resulting from the proposed merger of National Grid and NEES, approval of which has been sought in Docket No. EC99–49–000.

The Application states that it (I) includes all the information and exhibits required by Part 33 of the Commission's regulations and the Commission's Merger Policy Statement with respect to the Merger; (ii) incorporates by reference any additional materials required with respect to the acquisition by National Grid of the EUA Companies; and (iii) easily satisfies the criteria set forth in the Commission's Merger Policy Statement. The Application requests that the Commission grant whatever waivers or authorizations are needed and grant approval without condition, modification or an evidentiary, trial-type hearing. The Application states that the parties are seeking to close the Merger expeditiously and thus the Applicants have requested Commission approval by July 31, 1999.

The Applicants have served copies of the filing on the state commissions of Connecticut, Massachusetts, New Hampshire, Rhode Island and Vermont.

Comment date: July 6 , 1999, in accordance with Standard Paragraph E at the end of this notice.

3. PanEnergy Lake Charles Generation, Inc., Panhandle Acquisition Three, Inc. CMS Generation Co

[Docket No. EC99–71–000]

Take notice that on May 6, 1999, PanEnergy Lake Charles Generation, Inc. (PLCGI), Panhandle Acquisition Three, Inc. (PATT) and CMS Generation Co (CMS Generation) tendered for filing an application under Section 203 of the Federal Power Act for approval of the transfer of certain jurisdictional facilities associated with the sale of the stock of PLCGI by PATI to CMS Generation or an affiliate of CMS Generation, Trunkline Field Services Company.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Kintigh Facility Trust B–2

[Docket No. EG99–129–000]

Take notice that on May 4, 1999, Kintigh Facility Trust B–2 (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant is a Delaware business trust who will purchase and lease the Kintigh Generating Station (the Facility) to AES Eastern Energy, L.P., who will operate the Facility. The Facility is located at 7725 Lake Road, Barker, New York 14012 and is comprised of a coal-fired boiler and steam turbine generating unit, which provides a maximum of 688 MW of generating capacity.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those concerns the adequacy or accuracy of the application.

5. Kintigh Facility Trust C–1

[Docket No. EG99–130–000]

Take notice that on May 4, 1999, Kintigh Facility Trust C–1 (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant is a Delaware business trust who will purchase and lease the Kintigh Generating Station (the Facility) to AES Eastern Energy, L.P., who will operate the Facility. The Facility is

located at 7725 Lake Road, Barker, New York 14012 and is comprised of a coal-fired boiler and steam turbine generating unit, which provides a maximum of 688 MW of generating capacity.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Milliken Facility Trust C–1

[Docket No. EG99–131–000]

Take notice that on May 4, 1999, Milliken Facility Trust C–1 (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Delaware business trust who will purchase and lease the Milliken Generating Station (the Facility) to AES Eastern Energy, L.P., who will operate the Facility. The Facility is located at 228 Milliken Road, Lansing, New York 14882 and is comprised of two steam turbine generating units with a maximum of 306 MW of generating capacity.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Milliken Facility Trust B–1

[Docket No. EG99–132–000]

Take notice that on May 4, 1999, Milliken Facility Trust B–1 (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Delaware business trust who will purchase and lease the Milliken Generating Station (the Facility) to AES Eastern Energy, L.P., who will operate the Facility. The Facility is located at 228 Milliken Road, Lansing, New York 14882 and is comprised of two steam turbine generating units with a maximum of 306 MW of generating capacity.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Kintigh Facility Trust A–2

[Docket No. EG99–133–000]

Take notice that on May 4, 1999, Kintigh Facility Trust A–2 (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant is a Delaware business trust who will purchase and lease the Milliken Generating Station (the Facility) to AES Eastern Energy, L.P., who will operate the Facility. The Facility is located at 7725 Lake Road, Barker New York 14012 and is comprised of a coal-fired boiler and steam turbine generating unit, which provides a maximum of 688 MW of generating capacity.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

9. Milliken Facility Trust A–1

[Docket No. EG99–134–000]

Take notice that on May 4, 1999, Milliken Facility Trust A–1 (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant is a Delaware business trust who will purchase and lease the Milliken Generating Station (the Facility) to AES Eastern Energy, L.P., who will operate the Facility. The Facility is located at 228 Milliken Road, Lansing, New York 14882 and is comprised of two steam turbine generating units with a maximum of 306 MW of generating capacity.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

10. Milliken Facility Trust C–2

[Docket No. EG99–135–000]

Take notice that on May 4, 1999, Milliken Facility Trust C–2 (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant is a Delaware business trust who will purchase and lease the Milliken Generating Station (the Facility) to AES Eastern Energy, L.P., who will operate the Facility. The Facility is located at 228 Milliken Road, Lansing, New York 14882 and is comprised of two steam turbine generating units with a maximum of 306 MW of generating capacity.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

11. Kintigh Facility Trust A–1

[Docket No. EG99–136–000]

Take notice that on May 4, 1999, Kintigh Facility Trust A–1 (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant is a Delaware business trust who will purchase and lease the Milliken Generating Station (the Facility) to AES Eastern Energy, L.P., who will operate the Facility. The Facility is located at 7725 Lake Road, Barker New York 14012 and is comprised of a coal-fired boiler and steam turbine generating unit, which provides a maximum of 688 MW of generating capacity.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

12. Kintigh Facility Trust B–1

[Docket No. EG99–137–000]

Take notice that on May 4, 1999, Kintigh Facility Trust B–1 (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant is a Delaware business trust who will purchase and lease the Kintigh Generating Station (the Facility) to AES Eastern Energy, L.P., who will operate the Facility. The Facility is located at 7725 Lake Road, Barker New York 14012 and is comprised of a coal-fired boiler and steam turbine generating unit, which provides a maximum of 688 MW of generating capacity.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

13. Kintigh Facility Trust C–2

[Docket No. EG99–138–000]

Take notice that on May 4, 1999, Kintigh Facility Trust C–2 (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale

generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant is a Delaware business trust who will purchase and lease the Kintigh Generating Station (the Facility) to AES Eastern Energy, L.P., who will operate the Facility. The Facility is located at 7725 Lake Road, Barker, New York 14012 and is comprised of a coal-fired boiler and steam turbine generating unit, which provides a maximum of 688 MW of generating capacity.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

14. Milliken Facility Trust A–2

[Docket No. EG99–139–000]

Take notice that on May 4, 1999, Milliken Facility Trust A–2 (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant is a Delaware business trust who will purchase and lease the Milliken Generating Station (the Facility) to AES Eastern Energy, L.P., who will operate the Facility. The Facility is located at 228 Milliken Road, Lansing, New York 14882 and is comprised of two steam turbine generating units with a maximum of 306 MW of generating capacity.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

15. Green Power Partners I LLC

[Docket No. EG99–140–000]

Take notice that on May 5, 1999, Green Power Partners I LLC, 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Green Power Partners I LLC is constructing a wind turbine generation facility with approximately 22 wind turbines, each with a nameplate capacity of 750 kW, resulting in an aggregate peak generating capacity of 16.50 MW.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

16. MEP Pleasant Hill, LLC

[Docket No. EG99–141–000]

Take notice that on May 6, 1999, MEP Pleasant Hill, LLC, an indirect wholly owned subsidiary of UtiliCorp United Inc., tendered for filing an Application for Determination of Exempt Wholesale Generator Status under Part 365 of the Commission's Regulations.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

17. Sithe/Independence Power Partners, L.P. v. Niagara Mohawk Power Corp.

[Docket No. EL99–65–000]

Take notice that on May 3, 1999, Sithe/Independence Power Partners, L.P. (Sithe/Independence) tendered for filing with the Federal Energy Regulatory Commission a Complaint under Section 206 of the Federal Power Act, relating to the transmission rates, losses and certain terms and conditions under Sithe/Independence's agreements with Niagara Mohawk Power Corporation relating to the provision of transmission service.

Comment date: June 2, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

18. Cleco Trading & Marketing LLC

[Docket No. ER99–2300–000]

Take notice that on April 19, 1999, Cleco Trading & Marketing LLC (Cleco Trading), petitioned the Commission for acceptance of two amendments, First Superseding Original Sheet No. 27, dated April 17, 1999, to Rate Schedule No. 1 and Supplement No. 1, Original Sheet Nos. 1 and 2, dated April 17, 1999, to FERC Rate Schedule No. 1, to its Petition For Acceptance of Initial Rate Schedule, Waivers and Blanket Authority. The First Superseding Original Sheet No. 27 adds a new section 14.14 (Reassignment of Transmission Capacity) containing the Commission's standard form transmission capacity reassignment provision. Supplement No. 1 contains the Code of Conduct with Respect to the Relationship Between Cleco Trading & Marketing LLC and its Affiliates.

Cleco Trading intends to engage in wholesale electric power and energy purchases and sales as a marketer. Cleco Trading is not in the business of generating or transmitting electric power. Cleco Trading is an affiliate of Cleco Corporation, a public utility subject to the Commission's jurisdiction under the Federal Power Act, 16 U.S.C. § 791a, *et seq.*

Comment date: May 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. MDU Resources Group, Inc.

[Docket No. ES99–18–000]

Take notice that on April 24, 1999, MDU Resources Group, Inc., filed an amendment to a previous application asking for extension of the time period in which to exercise the authority granted to the Company in Docket No. ES99–18–000 issued on January 27, 1999. In that order the Company was authorized to issue promissory notes and other evidences of indebtedness, from time to time, not to exceed in the aggregate the amount of $400 million outstanding at any one time, on or before November 11, 1999, with a final maturity date no later than one year from the date of issuance. The Company seeks authority to issue the securities up to January 27, 2001.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–12848 Filed 5–20–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2855–000, et al.]

Commonwealth Edison Company, et al., Electric Rate and Corporate Regulation Filings

May 14, 1999.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER99–2855–000]

Take notice that on May 7, 1999, Commonwealth Edison Company (ComEd), tendered for filing Non-Firm Service Agreements with Southwestern Public Service Company (SPS), Public Service Co., of Colorado (PSC), and Omaha Public Power District (OPPD), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of May 7, 1999, for the service agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on SPS, PSC, and OPPD.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. El Paso Energy Corporation Sonat Inc.

[Docket No. EC99–73–000]

Take notice that on May 12, 1999, El Paso Energy Corporation (El Paso Energy) and Sonat Inc. (Sonat), on behalf of their respective public utility subsidiaries, tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 203 of the Federal Power Act (the FPA), 16 U.S.C. § 824(b) (1994), and Part 33 of the Commission's Regulations, 18 CFR Part 33, an application for an order approving their merger.

El Paso Energy is an energy holding company whose operations include interstate and intrastate transportation and storage of natural gas; gathering and processing natural gas; independent power generation; the marketing of natural gas, power and other commodities; and the development of energy infrastructure facilities worldwide. Sonat is an energy holding company whose operations include the transmission gathering, and storage of natural gas; domestic oil and gas exploration and production; independent power generation; and the marketing of natural gas and power.

Pursuant to a merger agreement, Sonat will merge into El Paso Energy through an exchange of stock. The Applicants state that they have submitted the information required by Part 33 of the Commission's Regulations in support of the application. The Applicants have requested that the Commission approve their application by September 1, 1999.

Comment date: July 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Power Service Corp., on Behalf of Monongahela Power Co., the Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–2856–000]

Take notice that on May 7, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 54 to add El Paso Power Services Company to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is May 6, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Delmarva Power & Light Company

[Docket No. ER99–2857–000]

Take notice that on May 7, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with DTE Energy Trading, Inc., under Delmarva's market rate sales tariff.

Delmarva requests an effective date of May 7, 1999.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER99–2861–000]

Take notice that on May 7, 1999, Public Service Company of New Mexico (PNM), tendered for filing a net-out agreement between PNM and Electric Clearinghouse, Inc. (ECI) PNM requested waiver of the Commission's notice requirement so that service under the PNM/ECI netting agreement may be effective as of April 1, 1999.

Copies of the filing were served on ECI and the New Mexico Public Regulation Commission.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–2862–000]

Take notice that on May 7, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Energy New England (ENE).

Con Edison states that a copy of this filing has been served by mail upon ENE.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–2863–000]

Take notice that on May 7, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to NYSEG Solutions (NYSEG).

Con Edison states that a copy of this filing has been served by mail upon NYSEG.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. ISO New England Inc.

[Docket No. ER99–2864–000]

Take notice that on May 7, 1999, ISO New England Inc., tendered for filing revisions to its Tariff for Transmission Dispatch and Power Administration Services.

Copies of said filing have been served upon all parties to this proceeding, upon NEPOOL Participants and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company

[Docket No. ER99–2866–000]

Take notice that on May 7, 1999, Commonwealth Edison Company (ComEd), tendered for filing service agreements establishing PP&L

EnergyPlus Co. (EPLUS), and Omaha Public Power District (OPPD), as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of May 7, 1999, for the Service Agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on EPLUS and OPPD.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company Of New York, Inc.

[Docket No. ER99–2865–000]

Take notice that on May 7, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Cargill-Alliant (CA).

Con Edison states that a copy of this filing has been served by mail upon CA.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–2860–000]

Take notice that on May 7, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 22 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of May 6, 1999, to New Energy Partners, L.L.C.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER99–2867–000]

Take notice that on May 7, 1999, Commonwealth Edison Company (ComEd), tendered for filing a Service Agreement, establishing Merrill Lynch Capital Services, Inc. (MLCS), as a customer under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of May 7, 1999, and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served upon MLCS.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER99–2868–000]

Take notice that on May 7, 1999, the California Independent System Operator Corporation tendered for filing notice that effective July 1, 1999, the Meter Service Agreement for Scheduling Coordinators between and Duke Energy Trading and Marketing, L.L.C., effective date April 1, 1998, and filed with the Federal Energy Regulatory Commission by the California Independent System Operator Corporation is to be canceled.

Notice of the proposed cancellation has been served upon Duke Energy Trading and Marketing, L.L.C., and the California Public Utilities Commission.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Peco Energy Company

[Docket No. ER99–2869–000]

Take notice that on May 7, 1999, PECO Energy Company (PECO) tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated September 29, 1998 with CL Power Sales Seven, L.L.C. (CL SEVEN) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of July 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to CL SEVEN and to the Pennsylvania Public Utility Commission.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ER99–2870–000]

Take notice that on May 7, 1999, Illinois Power Company (Illinois Power), tendered for filing an agreement concerning the provision of electric service to Illinois Valley Electric Cooperative, Inc., as a long-term service agreement under its Market Rate Tariff.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. The Detroit Edison Company

[Docket No. ER99–2871–000]

Take notice that on May 7, 1999, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (the Service Agreement) for Short Term Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff and also the Joint Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Duke Power, a division of Duke Energy Corporation, dated as of April 22, 1999. The parties have not engaged in any transactions under the Service Agreement prior to thirty days to this filing.

Detroit Edison requests that the Service Agreement be made effective as rate schedules as of May 24, 1999.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. The Detroit Edison Company

[Docket No. ER99–2873–000]

Take notice that on May 7, 1999, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (the Service Agreement) for Short Term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff and also the Joint Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Merchant Energy Group of the Americas (MEGA) dated as of October 15, 1998. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of May 21, 1999.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER99–2874–000]

Take notice that on May 7, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Granite City Steel Corporation will take transmission service pursuant to its open access transmission tariff. The

agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1999.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Illinois Power Company

[Docket No. ER99–2875–000]

Take notice that on May 7, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Mitsubishi Motor Manufacturing of America, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1999.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Illinois Power Company

[Docket No. ER99–2876–000]

Take notice that on May 10, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing updated specification pages to the existing Network Service Agreement under which Cinergy Services, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 10, 1999.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Minnesota Power, Inc.

[Docket No. ER99–2877–000]

Take notice that on May 10, 1999, Minnesota Power, Inc., tendered for filing a signed Service Agreement with Northern Indiana Public Service Company, under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Cinergy Services, Inc.

[Docket No. ER99–2878–000]

Take notice that on May 10, 1999, Cinergy Services, Inc. (Cinergy Services), as agent for and on behalf of its Operating Companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Filing of its Mutual Netting/Closeout Agreements between Cinergy Services and the following entities:

AYP Energy, Inc.
Aquila Energy Marketing Corporation
CNG Power Services Corporation
ConAgra Energy Services, Inc.
Constellation Power Source, Inc.
Coral Power LLC
Eastern Power Distribution, Inc.
Engage Energy US, L.P.
Enron Power Marketing, Inc.
Enserch Energy Services, Inc.
LG&E Energy Marketing Inc.
Nipsco Energy Services, Inc.
Northern Indiana Public Service Company
NorAm Energy Services, Inc.
QST Energy Trading, Inc.
Southern Energy Trading and Marketing, Inc.
Tractebel Energy Marketing, Inc.
Williams Energy Services Company

Copies of this filing were served upon all parties above.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Front Range Energy Associates L.L.C.

[Docket No. ER99–2879–000]

Take notice that on May 7, 1999, Front Range Energy Associates, L.L.C. (Front Range), tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, an application for waivers and blanket approvals under various regulations of the Commission, approval of a power sales agreement and for an order accepting its proposed power sales tariff for the sale of energy and capacity at market-bases rates.

Front Range seeks an effective date of July 6, 1999, for this filing.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Old Mill Power Company Docket

[Docket No. ER99–2883–000]

Take notice that on May 10, 1999, Old Mill Power Company (Old Mill), petitioned the Commission for acceptance of Old Mill Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Old Mill intends to engage in wholesale electric power and energy purchases and sales as a marketer. Old Mill is not in the business of generating or transmitting electric power.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Pacific Gas and Electric Company

[Docket No. ER99–2884–000]

Take notice that on May 10, 1999, Pacific Gas and Electric Company (PG&E) tendered for filing a request to continue passing through to existing wholesale customers the ISO GMC approved by the Commission for collection as of July 1, 1999. The ISO on April 30, 1999 tendered for filing a section 205 request for approval of the Grid Management Charge rate formula and assessment provisions and requested that the Commission permit the proposed Tariff changes to go into effect on July 1, 1999.

This filing seeks to keep PG&E's Pass-Through rate and tariff in conformity with the ISO GMC rate and tariff. This filing is part of the comprehensive restructuring proposal for the California electric power industry that is before the Federal Energy Regulatory Commission.

Copies of this filing have been served upon the California Public Utilities Commission and all other parties on the Service List to this proceeding.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Maine Public Service Company

[Docket No. ER99–2885–000]

Take notice that on May 10, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with DukeSolutions, Inc.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Maine Public Service Company

[Docket No. ER99–2886–000]

Take notice that on May 10, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for firm point-to-point transmission service under Maine Public's open access transmission tariff with DukeSolutions, Inc.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Arizona Public Service Company

[Docket No. ER99–2887–000]

Take notice that on May 10, 1999, Arizona Public Service Company (APS), tendered for filing umbrella Service Agreement to provide short-term Non-

Firm Point-to-Point Transmission Service to El Paso Power Services Company under APS' Open Access Transmission Tariff.

A copy of this filing has been served El Paso Power Services Company and the Arizona Corporation Commission.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. American Electric Power Service Corporation

[Docket No. ER99–2888–000]

Take notice that on May 10, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing service agreements by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit these service agreement to be made effective for on or after April 10, 1999.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Wisconsin Electric Power Company

[Docket No. ER99–2889–000]

Take notice that on May 10, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Long Term Firm Transmission Service Agreement between itself and (Alliant). The Transmission Service Agreement allows Alliant to receive seven megawatts of firm transmission service under Wisconsin Energy Corporation Operating Companies FERC Electric Tariff, Volume No. 1. The term is four years and ten months.

Wisconsin Electric requests an effective date of July 1, 1999 and partial waiver of the Commission's notice requirements in order to allow Alliant to purchase the renewable energy from Minergy Corporation (Minergy) in accordance with the terms arranged by those parties.

Copies of the filing have been served on Alliant, Minergy, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Wisvest-Connecticut, L.L.C.

[Docket No. ER99–2890–000]

Take notice that on May 10, 1999, Wisvest-Connecticut, L.L.C. (Wisvest-Connecticut), tendered for filing an executed long-term service agreement with Littleton Electric Light Department.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Wisvest-Connecticut, L.L.C.

[Docket No. ER99–2891–000]

Take notice that on May 10, 1999, Wisvest-Connecticut, L.L.C. (Wisvest-Connecticut), tendered for filing an amendment to a power supply agreement with The United Illuminating Company which the Commission previously accepted for filing on February 26, 1999. The United Illuminating Company, 86 FERC ¶ 61,197 (1999). The amendment revises the definition of Retained Assets in the filed agreement.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Denver City Associates, L.P.

[Docket No. ER99–2896–000]

Take notice that on May 10, 1999, Denver City Associates, L.P., tendered for filing the first amendment to its Power Purchase Agreement with Golden Spread Electric Cooperative, Inc.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Salt River Project Agricultural Improvement and Power District

[Docket No. NJ99–3–000]

Take notice that on May 10, 1999, the Salt River Project Agricultural Improvement and Power District (SRP), a non-public utility operating in Arizona submitted for filing revisions to its voluntary Open Access Transmission Tariff (OATT), and a request for a declaratory order which would find that SRP's OATT continues to meet the Federal Energy Regulatory Commission's (Commission) comparability standards and is therefore an acceptable reciprocity tariff pursuant to the provisions of Order No. 888, *et seq.*

Comment date: June 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–12849 Filed 5–20–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–1240–003, et al.]

PacifiCorp, et al.; Electric Rate and Corporate Regulation Filings

May 11, 1999.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER95–1240–003]

Take notice that on May 4 1999, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations and the Commission's Order under FERC Docket No. ER95–1240–000, dated April 21, 1999, an amended refund report.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Energy Moss Landing, LLC

[Docket No. ER98–2668–000]

Take notice that on May 3, 1999, Duke Energy Moss Landing, LLC, tendered for filing an addendum to its April 30, 1999, filing in the above referenced docket.

Comment date: May 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Monmouth Energy, Inc.

[Docket No. ER99–1293–001]

Take notice that on May 4, 1999, Monmouth Energy, Inc., tendered for filing its amended refund report in accordance with Commission Staff inquiry.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER99–2707–000]

Take notice that on April 30, 1999, the New England Power Pool Executive Committee tendered for filing a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Penobscot Hydro, LLC (Penobscot). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Penobscot's signature page would permit NEPOOL to expand its membership to include Penobscot. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Penobscot a member in NEPOOL.

NEPOOL requests an effective date of May 1, 1999, for commencement of participation in NEPOOL by Penobscot.

Comment date: May 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Energy Trading and Marketing, L.L.C.

[Docket No. ER99–2774–000]

Take notice that on May 3, 1999, Duke Energy Trading and Marketing, L.L.C. (DETM), tendered for filing a Notice of Succession with the Federal Energy Regulatory Commission indicating that the name of NP Energy Inc., has been changed to Duke Energy Trading and Marketing, L.L.C., effective March 31, 1999. In accordance with Sections 35.16 and 131.51 of the Commission's regulations, 18 CFR 35.16, 131.51, DETM adopted and ratified all applicable rate schedules filed with the FERC by NP Energy Inc.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER99–2779–000]

Take notice that on May 3, 1999, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies) tendered for filing: (1) an amendment to the unexecuted Network Operating Agreement (NOA) between the CSW Operating Companies and Northeast Texas Electric Cooperative, Inc. (NTEC); and (2) an amendment to the unexecuted NOA between the CSW Operating Companies and East Texas Electric Cooperative, Inc., (ETEC). The originally filed unexecuted NOAs between the CSW Operating Companies ad NTEC and ETEC have been set for hearing in Docket Nos. ER99–1659–000 and ER99–1660–000 (consolidated). See Central Power and Light Co., *et al.*, 87 FERC ¶ 61,001 (1999).

The amendments propose a new NOA Section 3.2. This provision specifies certain circumstances under which a network customer's network load may be curtailed.

The CSW Operating Companies request an effective date of July 2, 1999.

The CSW Operating Companies state that a copy of this filing has been served on each person listed on the official service list in Docket Nos. ER99–1659–000 and ER99–1660–000 (consolidated).

Comment date: May 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER99–2780–000]

Take notice that on May 3, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing as a supplement to PG&E Rate Schedule FERC No. 85, the Interconnection Agreement between PG&E and the City of Santa Clara, California (City or Santa Clara), a Letter Agreement between PG&E and Santa Clara retroactively adjusting the demand rates for the City for 1995 and 1996. The filing also includes a 1995 decision by the California Public Utilities Commission (CPUC), Decision No. 95–05–043, and a calculation of the Diablo Canyon Demand True-Up plus interest for the years 1995 and 1996.

Copies of this filing were served upon City and the CPUC.

Comment date: May 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. San Diego Gas & Electric Company

[Docket No. ER99–2789–000]

Take notice that on May 3, 1999, San Diego Gas & Electric Company (SDG&E), tendered for filing a Notice of Cancellation of Service Agreement Nos. 1 though 7, including Supplement No. 1 of FERC Electric Tariff Original Volume No. 5, by which SDG&E obtains wholesale distribution service under SDG&E's Open Access Distribution Tariff (the OADT) for its combustion turbines.

SDG&E requests that these notices of cancellation be made effective on the date as of which completion of the transfer of title from SDG&E to Cabrillo Power II LLC (Cabrillo Power II)—the purchaser and new owner of these combustion turbines—takes place. The closing of this transfer of title currently is anticipated to occur on or about May 14, 1999.

Copies of this filing have been served upon the California Public Utilities Commission and Cabrillo Power II.

Comment date: May 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. San Diego Gas & Electric Company

[Docket No. ER99–2790–000]

Take notice that on May 3, 1999, San Diego Gas & Electric Company (SDG&E), tendered for filing executed Service Agreements between SDG&E and Cabrillo Power II LLC (Cabrillo Power II) for service under SDG&E Open Access Distribution Tariff (OATD). SDG&E states that it tenders the Service Agreements to assure that service under the OATD is available to Cabrillo Power II by the date on which Cabrillo Power takes title to SDG&E's combustion turbines located in SDG&E's service area, currently anticipated to occur on May 14, 1999.

Copies of this filing have been served upon the California Public Utilities Commission and Cabrillo Power II.

Comment date: May 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Ogden Martin Systems of Union, Inc.

[Docket No. ER99–2791–000]

Take notice that on May 4, 1999, Ogden Martin Systems of Union, Inc., tendered for filing with the Commission (1) the Power Purchase and Interconnection Agreement dated April 11, 1990 between Union County Utilities Authority (UCUA) and Public Service Electric and Gas Company (PSE&G); (2) an Amendment to the Power Purchase and Interconnection Agreement dated May 28, 1998 between UCUA and PSE&G; and (3) an Assignment and Assumption of Power Purchase and Interconnection Agreement dated July 22, 1998, between UCUA and Ogden Union.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Archer Daniels Midland

[Docket No. ER99–2792–000]

Take notice that on May 4, 1999, Archer Daniels Midland (ADM), of Decatur, Illinois tendered for filing with the Commission a Power Purchase Agreement with Central Illinois Light Company, under which ADM would sell energy to CILCO at market-based rates.

ADM requested an effective date of June 1, 1999.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Central Maine Power Company

[Docket No. ER99–2793–000]

Take notice that on May 4, 1999, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service entered into with HQ Energy Services (U.S.) Inc. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket No. ER99–2794–000]

Take notice that on May 4, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing Amendment No. 1 to the Interim Short Term Coordination Agreement between the Sacramento Municipal Utility District (SMUD) and PG&E (Agreement). Amendment No. 1, modifies certain terms and provisions of the Agreement and extends its term. The filing does not modify any rate levels.

The Agreement and its appendices were originally accepted for filing by the Commission in FERC Docket No. ER98–4067–000 and designated as PG&E Rate Schedule FERC No. 201.

Copies of this filing were served upon SMUD, the California Independent System Operator and the California Public Utilities Commission.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Great Bay Power Corporation

[Docket No. ER99–2796–000]

Take notice that on May 4, 1999, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Cinergy Capital & Trading, Inc., and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1998, in Docket No. ER98–3470–000.

The service agreement is proposed to be effective April 30, 1999.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–2797–000]

Take notice that on May 4, 1999, Alliant Energy Corporate Services, Inc., tendered for filing an executed Service Agreement for short-term firm point-to-point transmission service, establishing The Energy Authority, Inc., as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of April 26, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Sierra Pacific Power Company

[Docket No. ER99–2798–000]

Take notice that on May 4, 1999, Sierra Pacific Power Company (Sierra), tendered for filing Service Agreements (Service Agreements) with Energy Transfer Group, L.L.C., for both Short-Term Firm and Non-Firm Point-to-Point Transmission Service under Sierra's Open Access Transmission Tariff (Tariff).

Sierra filed the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet No. 148 (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit and effective date of May 5, 1999, for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Maine Electric Power Company Inc.

[Docket No. ER99–2800–000]

Take notice that on May 4, 1999, Maine Electric Power Company, Inc. (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point transmission service entered into with Florida Power & Light Company (FPLEMT). Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

MEPCO respectfully requests that the Commission accept this Service Agreement for filing and requests waiver of the Commission's notice requirements to permit service under the agreement to begin effective as of May 4, 1999.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Maine Electric Power Company Inc.

[Docket No. ER99–2801–000]

Take notice that on May 4, 1999, Maine Electric Power Company, Inc. (MEPCO), tendered for filing a service agreement for Umbrella Non-Firm Point-to-Point transmission service entered into with Constellation Power Source, Inc. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Maine Electric Power Company Inc.

[Docket No. ER99–2802–000]

Take notice that on May 4, 1999, Maine Electric Power Company, Inc. (MEPCO), tendered for filing a service agreement for Short-Term Firm Point-to-Point transmission service entered into with Constellation Power Source, Inc. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Montaup Electric Company

[Docket No. ER99–2804–000]

Take notice that on May 4, 1999, Montaup Electric Company (Montaup), tendered for filing an executed service

agreements under Montaup's market-based power sales tariff, FERC Electric Tariff, Original Volume No. 8, between Montaup and the following companies:

Baltimore Gas & Electric Co. (BG&E)
DukeSolutions, Inc. (DukeSolutions)
Enserch Energy Services, Inc. (EESI)
FPL Energy Power Marketing, Inc. (FPL EPMI)

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Storm Lake Power Partners I LLC

[Docket No. ER99–2805–000]

Take notice that on May 4, 1999, in compliance with the Commission's orders approving its market-based rate schedule, 80 FERC ¶ 61,051 (1997) and Unreported Letter Order in Docket No. ER98–4643–000, dated November 10, 1998, Storm Lake Power Partners I LLC, (Storm Lake I), tendered for filing a Notification of Change in Status. The Storm Lake I filing describes the generation facilities of new affiliates of Storm Lake I and concludes that Storm Lake I's affiliation with these facilities does not alter the characteristics that the Commission relied upon in approving the market-based pricing for Storm Lake I.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Storm Lake Power Partners II, LLC

[Docket No. ER99–2806–000]

Take notice that on May 4, 1999, in compliance with the Commission's order approving its market-based rate schedule, 81 FERC ¶ 61,058 (1997), Storm Lake Power Partners II, LLC (Storm Lake II), tendered for filing a Notification of Change in Status. The Storm Lake II filing describes the generation facilities of new affiliates of Storm Lake II and concludes that Storm Lake II's affiliation with these facilities does not alter the characteristics that the Commission relied upon in approving the market-based pricing for Storm Lake II.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Enron Power Marketing, Inc.

[Docket No. ER99–2807–000]

Take notice that on May 4, 1999, in compliance with the Commission's orders approving its market-based rate schedule, 65 FERC ¶ 61,305 (1993) and 66 FERC ¶ 61,244 (1994), Enron Power Marketing, Inc. (EPMI), tendered for filing a Notification of Change in Status. The EPMI filing describes the generation facilities of new affiliates of EPMI and concludes that EPMI's affiliation with these facilities does not alter the characteristics that the Commission relied upon in approving the market-based pricing for EPMI.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Enron Energy Services, Inc.

[Docket No. ER99–2808–000]

Take notice that on May 4, 1999, in compliance with the Commission's orders approving its market-based rate schedule, 81 FERC ¶ 61,267 (1997), and 84 FERC ¶ 61,214, Enron Energy Services, Inc. (EES), tendered for filing a Notification of Change in Status. The EES filing describes the generation facilities of new affiliates of EES and concludes that EES's affiliation with these facilities does not alter the characteristics that the Commission relied upon in approving the market-based pricing for EES.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Clinton Energy Management Services, Inc.

[Docket No. ER99–2809–000]

Take notice that on May 4, 1999, in compliance with the Commission's order approving its market-based rate schedule, 84 FERC ¶ 61,214 (1998), Clinton Energy Management Services, Inc. (Clinton Energy), tendered for filing a Notification of Change in Status. The Clinton Energy filing describes the generation facilities of new affiliates of Clinton Energy and concludes that Clinton Energy's affiliation with these facilities does not alter the characteristics that the Commission relied upon in approving the market-based pricing for Clinton Energy.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Lake Benton Power Partners, LLC

[Docket No. ER99–2810–000]

Take notice that on May 4, 1999, in compliance with the Commission's orders approving its market-based rate schedule, 80 FERC ¶ 61,051 (1997) and Unreported Letter Order in Docket No. ER98–4643–000, dated November 10, 1998, Lake Benton Power Partners, LLC, (Lake Benton, LLC) tendered for filing a Notification of Change in Status. The Lake Benton, LLC filing describes the generation facilities of new affiliates of Lake Benton, LLC and concludes that Lake Benton, LLC's affiliation with these facilities does not alter the characteristics that the Commission relied upon in approving the market-based pricing for Lake Benton, LLC.

Comment date: May 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Louisville Gas and Electric Co., Kentucky Utilities Company

[Docket No. ER99–2811–000]

Take notice that on May 4, 1999, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/KU and FirstEnergy Corp., under LG&E/KU's Open Access Transmission Tariff.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Louisville Gas and Electric Co. and Kentucky Utilities Company

[Docket No. ER99–2812–000]

Take notice that on May 4, 1999, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Non-Firm Point-To-Point Transmission Service between LG&E/KU and DukeSolutions, Inc., under LG&E/KU's Open Access Transmission Tariff.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Louisville Gas and Electric Co. and Kentucky Utilities Company

[Docket No. ER99–2813–000]

Take notice that on May 4, 1999, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/KU and DukeSolutions, Inc., under LG&E/KU's Open Access Transmission Tariff.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–12818 Filed 5–20–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2762–000, et al.]

San Diego Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

May 13, 1999.

Take notice that the following filings have been made with the Commission:

1. San Diego Gas & Electric Company

[Docket No. ER99–2762–000]

Take notice that on May 6, 1999, San Diego Gas & Electric Company tendered for filing an addendum to Statement BL, to its April 30, 1999, filing in the above-referenced docket.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket Nos. ER99–237–003 and ER96–58–004]

Take notice that on May 6, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company tendered for filing a compliance filing regarding Amendment No. 2, to the Allegheny Power Pro Forma Open Access Transmission Tariff. This filing is intended to comply with the Commission's order issued on April 6, 1999 in Docket Nos. ER99–58–002 and ER99–237–001.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of New Mexico

[Docket Nos. ER96–1551–000, OA96–202–000 and OA96–202–002]

Take notice that on May 6, 1999, Public Service Company of New Mexico (PNM), in compliance with the Commission's Letter Order dated April 6, 1999, approving the Stipulation and Agreement filed by PNM on July 27, 1998 (in the above captioned dockets) resolving the mandatory rates for ancillary services contained in PNM's Open Access Transmission Tariff (OATT), tendered for filing two revised tariff sheets (First Revised Sheet Nos. 31 and 54 to PNM's Original Transmission Service Tariff Volume 4) to modify the loss percentages contained in Sections 15.7 and 28.5 (respectively) to conform with the losses agreed upon in a prior related settlement agreement that resolved PNM's transmission service rates.

PNM's filing is available for public inspection at PNM's offices in Albuquerque, New Mexico.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Potomac Electric Power Company

[Docket No. ER99–2825–000]

Take notice that on May 6, 1999, Potomac Electric Power Company (Pepco), tendered for filing technical amendments to the terms and conditions and form of service agreement (but not the rates) of its cost-based Power Sales Tariff (Pepco FERC Electric Tariff No. 1) to bring its terms into conformity with those of its Market Based Tariff (Pepco FERC Electric Tariff No. 5).

An effective date of June 30, 1999 is requested.

Concurrently, Pepco tendered notice of termination of its open-access transmission tariff (Pepco FERC Electric Tariff No. 4). An effective date of April 1, 1997 is requested, as Pepco's transmission tariff was superseded by the PJM OATT on that date. The PJM Tariff, which initially was made effective subject to further order of the Commission, recently became effective on a final basis.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Avista Corporation

[Docket No. ER99–2826–000]

Take notice that on May 5, 1999, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, unexecuted Service Agreements and Certificates of Concurrence under Avista Corporation's FERC Electric Tariff First Revised Volume No. 10, with Idaho Power Company, Puget Sound Energy, PacificCorp and Portland General Electric.

Avista Corporation requests waiver of the prior notice requirements and requests an effective date of April 4, 1999.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Southwest Power Pool, Inc.

[Docket No. ER99–2830–000]

Take notice that on May 5, 1999, Southwest Power Pool, Inc., tendered for filing notice that effective April 1, 1999, Southwest Power Pool, Inc.'s (SPP) Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with NP Energy, Inc. (NP), effective date June 1, 1998 and filed with the Federal Energy Regulatory Commission by SPP, are to be canceled.

Notice of the proposed cancellation has been served upon NP.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Corporation

[Docket No. ER99–2831–000]

Take notice that on May 5, 1999, New York State Electric & Gas Corporation (NYSEG), tendered Service Agreements between NYSEG and Enserch Energy Services (New York), Inc., FPL Energy Power Marketing, Inc., Florida Power and Light Company, and Cargill-Alliant, LLC (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed July 9, 1997 and effective on November 27, 1997, in Docket No. ER97–2353–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of April 30, 1999 for the Service Agreements.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company and Montaup Electric Company

[Docket No. ER99–2832–000]

Take notice that on May 5, 1999, New England Power Company (NEP) and

Montaup Electric Company (Montaup), tendered for filing an amendment to NEP's open access transmission tariff, New England Power Company, FERC Electric Tariff, Original Volume No. 9. Further, pursuant to Sections 35.15 and 131.53 of the Commission's regulations, 18 CFR 35.15 & 131.53, NEP and Montaup Electric Company (Montaup) submit for filing Notices of Cancellation for certain NEP and Montaup rate schedules, including Montaup's open access transmission tariff, Montaup Electric Company, FERC Electric Tariff, Original Volume No. 7. These filings are being made in connection with the merger of NEP's and Montaup's corporate parents, New England Electric System and Eastern Utilities Associates, respectively, and the subsequent consolidation of Montaup and NEP.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. MEP Pleasant Hill, LLC

[Docket No. ER99–2833–000]

Take notice that on May 6, 1999, MEP Pleasant Hill, LLC (MEPPH) and UtiliCorp United Inc. (UtiliCorp), on behalf of its Missouri Public Service (MPS), operating division, jointly tendered for filing a Power Sales Agreement between MEPPH and UtiliCorp (MPS) dated February 22, 1999.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation, NGE Generation, Inc. and AFS NY, L.L.C.

[Docket No. ER99–2834–000]

Take notice that on May 6, 1999, New York State Electric & Gas Corporation (NYSEG), NGE Generation, Inc. (NGE Gen) and AES NY, L.L.C. (AES NY), Jointly tendered for filing with the Commission Amendment No. 1, to the Interconnection Agreement between NYSEG and AES NY and Amendment No. 1, to the Milliken Operating Agreement between NYSEG and AES NY and request for waivers and an effective date of the closing date of the divestiture of six coal-fired generating plants from NYSEG and NGE Gen to AES NY.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER99–2835–000]

Take notice that on May 6, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Energy Transfer Group, L.L.C., Public Service Company of Colorado, and Southwestern Public Service Company, all under the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after April 15, 1999.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Central Maine Power Company

[Docket No. ER99–2837–000]

Take notice that on May 6, 1999, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Wisvest-Connecticut, LLC. Service will be provided pursuant to CMP's Market-Based Power Sales Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Elwood Energy, LLC

[Docket No. ER99–2838–000]

Take notice that on May 6, 1999, Elwood Energy LLC (Elwood), tendered for filing its proposed Emergency Redispatch Tariff. The tariff provides for the dispatch of the Elwood Generation Facility during emergencies by Commonwealth Edison Company (ComEd), the utility with which the facility is interconnected.

Elwood requests that the proposed tariff become effective on the commercial operation date of the first unit of the facility currently scheduled for June 11, 1999, and has therefore requested that the Commission waive its notice requirements.

Elwood has served copies of the filing on the Illinois Commerce Commission and ComEd, the only customer under the proposed tariff.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER99–2839–000]

Take notice that on May 6, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with NRG Power Marketing, Inc. (NRG), under the NU System Companies' Sale for Resale Tariff No. 7.

NUSCO requests that the Service Agreement become effective May 1, 1999.

NUSCO states that a copy of this filing has been mailed to NRG.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. FirstEnergy System

[Docket No. ER99–2840–000]

Take notice that on May 6, 1999, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service for Automated Power Exchange and Ameren Services Company, the Transmission Customers. Services are being provided under FirstEnergy System's Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective dates under the Service Agreements are April 26, 1999 and May 1, 1999 respectively, for the above mentioned Service Agreements in this filing.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. FirstEnergy System

[Docket No. ER99–2841–000]

Take notice that on May 6, 1999, FirstEnergy System tendered for filing Service Agreements to provide Non-Firm Point-to-Point Transmission Service for Ameren Services Company and Automated Power Exchange (the Transmission Customers). Services are being provided under FirstEnergy System's Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective dates under the Service Agreements are May 1, 1999 and April 26, 1999, respectively.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Northeast Utilities Service Company

[Docket No. ER99–2842–000]

Take notice that on May 6, 1999, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company and

Holyoke Water Power Company, tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations, a rate schedule change for the sales of electric energy to Mansfield Municipal Electric Department (Mansfield).

NUSCO states that a copy of this filing has been mailed to Mansfield.

NUSCO requests that the rate schedule change become effective on May 7, 1999.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Commonwealth Edison Company

[Docket No ER99–2843–000]

Take notice that on May 6, 1999, Commonwealth Edison Company (ComEd), tendered for filing an Interconnection Agreement with Elwood Energy, LLC (Elwood).

ComED requests an effective date of April 23, 1999 and accordingly seeks waiver of the Commission's notice requirements. Copies of the filing were served on Elwood and the Illinois Commerce Commission.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER99–2844–000]

Take notice that on May 6, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and CLECO Corporation (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4.

NSP requests that this Electric Service Agreement be made effective on April 7, 1999.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Orange and Rockland Utilities, Inc.

[Docket No. ER99–2845–000]

Take notice that on May 5, 1999, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and KeySpan Ravenswood, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of April 5, 1999, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: May 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER99–2846–000]

Take notice that on May 6, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and CLECO Corporation (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made Effective on April 7, 1999.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Cinergy Services, Inc.

[Docket No. ER99–2848–000]

Take notice that on May 5, 1999, Cinergy Services, Inc., as agent for and on behalf of its Operating Companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (the Cinergy Operating Companies), tendered for filing a Rate Schedule for Resale, Assignment or Transfer of Transmission Rights and Ancillary Services (Rate Schedule) and form of Service Agreement. The Rate Schedule will allow the Cinergy Operating Companies to resell its transmission service and ancillary service rights on The Cinergy Operating Companies' own system and third-party systems in accordance with Order Nos. 888 and 888–A,

The Cinergy Operating Companies have requested an effective date of May 6, 1999, for the Cinergy Operating Companies' Rate Schedule.

Copies of this filing have been served on the public utility commissions of Indiana, Ohio and Kentucky.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. MidAmerican Energy Company

[Docket No. ER99–2849–000]

Take notice that on May 6, 1999, MidAmerican Energy Company (MidAmerican), P.O. Box 657, 666 Grand Avenue, 28th Floor, Des Moines, Iowa 50303, tendered for filing a Facilities Agreement and an Interconnection Agreement, both dated April 2, 1999 and entered into by MidAmerican with Cordova Energy Company LLC (CEC). CEC is an affiliate of MidAmerican.

MidAmerican states that the Facilities Agreement provides for the construction of, and a contribution-in-aid of construction by CEC for, two transmission line taps and substation facilities as additions to MidAmerican's transmission system to permit the physical interconnection to the MidAmerican transmission system of a gas-fired, combined cycle unit electric generating plant (Plant) that CEC proposes to build in Rock Island County Illinois. MidAmerican states that the Interconnection Agreement authorizes CEC to connect the Plant and its adjacent substation to the MidAmerican transmission system.

Copies of the filing were served on CEC, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Louisville Gas and Electric Co; and Kentucky Utilities Company

[Docket No. ER99–2850–000]

Take notice that on May 5, 1999, Louisville Gas and Electric/Kentucky Utilities Company (LG&E/KU) tendered for filing a proposed revision to Attachment C, Methodology to Assess Transmission Capability, of LG&E/KU's (LG&E Operating Companies LOC's Open Access Transmission Tariff.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Northeast Utilities Service Company

[Docket No. ER99–2851–000]

Take notice that on May 5, 1999, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company) and Public Service Company of New Hampshire (together the NU System Companies), tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the

Commission's Regulations, a rate schedule change for sales of electric energy to Citizens Lehman Power Sales.

NUSCO states that a copy of this filing has been mailed to Citizens Lehman Power Sales.

NUSCO requests that the rate schedule change become effective on May 5, 1999.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Arizona Public Service Company

[Docket No. ER99–2852–000]

Take notice that on May 5, 1999, Arizona Public Service Company (APS), tendered for filing revised charges to an existing transmission agreement with Arizona Electric Cooperative, Inc. (AEPCO).

A copy of this filing has been served on the Arizona Corporation Commission and AEPCO.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Eastern Edison Company

[Docket No. ER99–2853–000]

Take notice that on May 6, 1999, Eastern Edison Company (EECO), tendered for filing an executed Interconnection Agreement between itself and Browning Ferris Gas Services, Incorporated. (BFGSI). The Interconnection Agreement establishes the requirements, terms and conditions for EECO to complete system upgrades which will enable BFGSI to operate in parallel with the EECO electrical system for additional generator units.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Entergy Services, Inc.

[Docket No. ER99–2854–000]

Take notice that on May 6, 1999, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing its 1999 annual rate redetermination update (Update) in accordance with the Open Access Transmission Tariff filed in compliance with FERC Order No. 888 in Docket No. OA96–158–000. Entergy Services states that the Update redetermines the formula rate in accordance with the annual rate redetermination provisions of Appendix 1 to Attachment H and Appendix A to Schedule 7.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. MEP Pleasant Hill, LLC

[Docket No. ER99–2858–000]

Take notice that on May 6, 1999, MEP Pleasant Hill, LLC, and indirect wholly owned subsidiary of UtiliCorp United Inc., tendered for filing a rate schedule to engage in sales at market-based rates. MEP Pleasant Hill, LLC included in its filing a proposed code of conduct.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Denver City Energy Associates, L.P.

[Docket No. ER99–2922–000]

Take notice that on May 4, 1999, Denver City Energy Associates, L.P., tendered for filing a Test Energy Sales Agreement with Golden Spread Electric Cooperative, Inc., providing for sales of test energy generated at the Mustang Station (the test energy agreement) under construction near Denver City, Texas (the facility).

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–12850 Filed 5–20–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6348–15]

Agency Information Collection Activities: Proposed Collection; Comment Request; ''National Recycling and Emissions Reduction Program''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): ''National Recycling and Emissions Reduction Program,'' EPA ICR Number: 1626.07, OMB Control Number: 2060–0256, expiration date—June 30, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 20, 1999.

ADDRESSES: Comments should be submitted in duplicate to the attention of Air Docket No. A–92–01 VIII.J; Environmental Protection Agency; 401 M Street (6205J), S.W.; Washington, D.C. 20460. Materials relevant to this proposed rulemaking are contained in Air and Radiation Docket No. A–92–01 VIII.J. This docket is located in Room M–1500; Waterside Mall (Ground Floor); U.S. Environmental Protection Agency; 401 M Street, S.W.; Washington, D.C. 20460. Dockets may be inspected Monday through Friday from 8:30 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Julius Banks; Stratospheric Protection Division; U.S. EPA (6205J); 401 M Street, S.W.; Washington, D.C. 20460; Phone: (202) 564–9870; Facsimile: (202) 565–2096. For questions only, you may use the electronic address banks.julius@epa.gov. All comments must be sent to the docket.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are refrigeration and air-conditioning service and repair shops; plumbing, heating, and air-conditioning contractors; refrigerated transport service dealers; scrap metal recyclers; automobile dismantlers and recyclers. Additional entities affected include Clean Air Act section 608

technician certification programs, equipment certification programs, refrigerant wholesalers and reclaimers, and other establishments that perform refrigerant removal, service, and/or disposal.

Title: ''National Recycling and Emissions Reduction Program'' (OMB Control No. 2060–0256; EPA ICR No. 1626.07) expiring 6/30/99.

Abstract: In 1993, EPA promulgated regulations under section 608 of the Clean Air Act Amendments of 1990 for the recycling of ozone depleting refrigerants, specifically chlorofluorocarbons (CFCs) and hydrofluorocarbons (HCFCs), in air-conditioning and refrigeration equipment. These regulations were published on May 14, 1993 (58 FR 28660) and codified in 40 CFR subpart F (section 82.150 *et seq.*). Section 608 also establishes self-effectuating prohibitions on the knowing venting, release, or disposal of any substitute substance for ozone-depleting refrigerants during the maintenance, service, repair, and disposal of any device which contains and uses any substitute refrigerant for household or commercial purposes. Substitutes may be exempt from this prohibition if EPA determines that venting, releasing, or disposing of such substances does not pose a threat to the environment. Substitutes for CFCs and HCFCs are included in recordkeeping requirements which will not lead to additional burden hours on affected entities. The reasons for collection of the information; its intended use; and whether the requirements are mandatory, voluntary, or required to obtain a benefit are described below. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual burden is reported in this Notice by annual respondent burden. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Additional burden hours associated with the implementation of this notice are avoided due to the marketplace balance that will occur as ozone-depleting substances are phased out and replaced by substitutes; therefore, this ICR renewal does not include any burden for third-party or public disclosures that were not previously reviewed and approved by OMB. The annual burden hours for this collection of information are estimated as follows: 16 hours for two equipment testing organizations; 1,125 hours for an estimated 2,250 service establishments that will change ownership or enter the market; 12.5 hours for an estimated 25 disposal establishments that change ownership or enter the market; 10,000 hours for the maintenance of copies of signed statements by an estimated 500 disposal establishments; 40 hours for certification of an estimated 20 refrigerant reclaimers that change ownership or enter the market; 400 hours for reclaimer reporting from an estimated 80 respondents; 40,000 hours for an estimated 5,000 refrigerant wholesalers to maintain records of refrigerant sales transactions; 300 hours for an estimated 10 technician certification programs applying for first-time approval; 1,600 hours for 100 technician certification programs to maintain records; 96,000 hours for an estimated 330,000 technicians acquiring certification and maintaining certification cards; 268,500 hours for an estimated 2,003,850 owners of refrigeration and air-conditioning equipment to maintain records on refrigerant and equipment; and 990 hours for an estimated 210 owners of industrial process refrigeration equipment.

Dated: May 7, 1999.

Julius Banks,

Stratospheric Protection Division, OAR.

[FR Doc. 99–12941 Filed 5–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6347–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Emission Defect Information Reports and Voluntary Emissions Recall Reports for On-Highway, Light-Duty Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Emission Defect Information and Voluntary Emissions Recall Reports for On-Highway, Light-Duty Motor Vehicles (OMB # 2060–0048, EPA # 282.08, approved through 7/31/99). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 20, 1999.

ADDRESSES: Vehicle Programs & Compliance Division (6405J), 401 M Street, SW, Washington, DC 20460. Interested persons may request a copy of the ICR, without charge, by writing, faxing, or phoning the contact person below.

FOR FURTHER INFORMATION CONTACT: Steve Albrink, Office of Mobile Sources, Vehicle Programs & Compliance Division, (202) 564–8997, (202) 565–2057 (fax). E-mail address: albrink.steve@epa.gov.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are manufacturers of on-highway light-duty vehicles and light-duty trucks.

Title: Emission Defect Information and Voluntary Emissions Recall Reports (OMB # 2060–0048, EPA ICR # 282.08, approved through 7/31/99.)

Abstract: Some manufacturers of motor vehicles are required to submit two different reports under 40 CFR part 85. These reports are only required where certain conditions involving emission defects or voluntary recalls occur.

The ''defect information report'' (DIR) contains data regarding the class or engine family and number of vehicles on which a defect has been found, and a description of the defect and its effects on vehicle performance and emissions. The Agency uses the DIR to help identify emission-related defects or classes of vehicles which may not comply with federal emissions standards.

The ''voluntary emission recall'' (VER) report contains data on voluntary recall campaigns conducted by manufacturers, including the procedures used by the manufacturers to conduct voluntary recall campaigns, the identification of vehicles or engines affected by the campaign, and the repair to be completed on recalled vehicles; progress or quarterly updates of the VER reports track the number of vehicles repaired. The Agency uses the VER report and progress reports to ensure that manufacturers are following acceptable procedures when conducting recalls and to track the progress and effectiveness of voluntary recall campaigns. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of the appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency projects the cost to the public of this ICR is estimated to be 1256 hours and $85,007. A respondent's burden for a defect information report is estimated to be 14 hours per report. The estimated frequency per respondent is expected to average 5.1 responses per year. It is estimated that there will be an average of 12 respondents submitting defect information reports per year.

A respondent's burden for a voluntary emissions recall report and the follow-up progress reports is estimated to be 3.5 hours and 14 hours, respectively, per voluntary emissions recall report. The estimated frequency per respondent is expected to average 3.8 voluntary recall reports per year. It is estimated that there will be an average of 6 respondents submitting voluntary emissions recall reports per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements; training personnel to be able to respond to a collection of information; searching data sources; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

Dated: May 13, 1999.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–12944 Filed 5–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6242–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed May 10, 1999 Through May 14, 1999

Pursuant to 40 CFR 1506.9

EIS No. 990157, DRAFT EIS, BLM, WY, South Baggs Natural Gas Development Area, Proposal to Drill and Develop 50 Natural Gas Wells, Application for Permit to Drill and COE Section 404 Permit, Carbon County, WY, Due: July 21, 1999, Contact: Larry Jackson (307) 328–4231.

EIS No. 990158, DRAFT EIS, AFS, UT, Pretty Tree Bench Vegetation Project, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT, Due: July 06, 1999, Contact: Kevin Schulkoski (435) 826–5400.

EIS No. 990159, DRAFT EIS, AFS, MT, Nevada/Dalton Project, Implementation of Fire Treatment, Timber Harvest, Travel Management of Road, Helena National Forest, Lincoln Ranger District, Lewis & Clark and Powell Counties, MT, Due: July 06, 1999, Contact: Thomas J. Andersen (406) 449–5201 ext. 277.

EIS No. 990160, DRAFT EIS, FHW, MD, Middle River Employment Center Access Study, Transportation Improvements, NPDES and COE Section 404 Permit, Baltimore County, MD, Due: July 16, 1999, Contact: Ms. Mary Huie (410) 962–4342 ext. 148.

EIS No. 990161, DRAFT EIS, FHW, NY, Miller Highway Project, Relocation of Miller Highway between West 59th Street to West 72nd Streets on the Upper West Side of Manhattan, (P.I.N. 103.37), Funding and COE Section 404 Permit, New York County, NY, Due: July 06, 1999, Contact: Jim Brown (212) 465–5000.

EIS No. 990162, DRAFT EIS, USN, GU, Surplus Navy Property Identified in the Guam Land Use Plan (GLUP '94) for Disposal and Reuse, Implementation, GU, Due: July 06, 1999, Contact: Gerald Gibbons (808) 471–9338.

EIS No. 990163, DRAFT EIS, BLM, CA, Soledad Canyon Sand and Gravel Mining Project, Proposal to Mine, Produce and Sell Sand and Gravel, Private Owned and Federally Owned Lands, Transit Mixed Concrete, Los

Angeles County, CA, Due: July 06, 1999, Contact: Ms. Elena Misquez (760) 251–4804.

EIS No. 990164, FINAL EIS, TVA, TN, GA, TN, Peaking Capacity Additions, Construction and Operation of Natural Gas-Fired Combustion Turbines, NPDES and COE Section 404 Permits; Three Sites Proposed: Colbert Fossil Plant, Colbert County, AL, Gallatin Fossil Plant, Sumner County, TN and Johnsonville Fossil Plant, Humphreys County, TN, Due: June 21, 1999, Contact: Gregory L. Askew (423) 632–6418.

EIS No. 990165, FINAL SUPPLEMENT, SFW, WA, Plum Creek Timber Sale, Issuance of a Permit to Allow Incidental Take and Habitat Conservation Plan (HCP) for Threatened and Endangered Species, Implementation, Updated Information on the Proposed Exchange of Private and Federal Lands Eastern and Western Cascade Provinces in the Cascade Mountains, King and Kittitas Counties, WA, Due: June 21, 1999, Contact: William O. Vogel (360) 753–9440.

EIS No. 990166, FINAL EIS, FAA, ADOPTION—Colorado Airspace Initiative, Modifications to the National Airspace System, such as the F–16 Aircraft and Aircrews of the 140th Wing of the Colorado Air National Guard, also existing Military Operations Area (MOAs) and Military Training Routes (MTRs), CO, NM, KS, NB and WY, Due: June 21, 1999, Contact: Elizabeth Gaffin (202) 267–7899.

The U.S. Department of Transportation's, Federal Aviation Administration (FAA) has adopted the United States Air Force's, Air National Guard FEIS #970325 filed 8–15–97. FAA was not a Cooperating Agency for the above final EIS. Recirculating of the document is necessary under § 1506.3(b) of the Council on Environmental Quality Regulations.

Amended Notices EIS No. 990143, DRAFT EIS, TPT, CA, Presidio of San Francisco General Management Plan, Implementation, New Development and Uses within the Letterman Complex, Golden Gate National Recreation Area, City and County of San Francisco, CA, Due: June 26, 1999, Contact: John Pelka (415) 561–5300.

Published FR–04–30–99—Correction to Due Date.

Dated: May 18, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of the Federal Activities.

[FR Doc. 99–12958 Filed 5–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6242–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 26, 1999 Through April 30, 1999 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 9, 1999 (64 FR 17362).

Draft EISs

ERP No. D–BLM–A99217–00 Rating EO2, Programmatic EIS–Surface Management Regulations for Locatable Mineral Operations, (43 CFR part 3809), Public Land.

Summary: EPA expressed environmental objections regarding environmental performance standards and goals; bonding, reclamation and monitoring plans; and implementing of the definition of unnecessary and undue degradation. EPA also commented on state government coordination, most appropriate technology and practices, and protections for riparian areas. EPA requested that these issues be addressed in the final EIS and proposed rule.

ERP No. D–COE–E39046–00 Rating EC2, Apalachicola-Chattahochee-Flint (AFC) River Basin Water Allocation, Allocation Formula Approval, FL and GA.

Summary: EPA expressed environmental concern that the Draft EIS may not adequately assess the impacts of the water allocation formulas. EPA recommended that comprehensive river basin water quality models be developed to predict impacts to indigenous fish and aquatic life, water quality, consumptive uses, groundwater and recreation for the affected reservoirs and rivers within each basin. EPA also recommended that a baseline be established that would define the water needs for the river basins to function in an acceptable manner and that would delineate the limit for maximum water withdrawals.

ERP No. D–COE–E39047–AL Rating EC2, Jackson Port Project, Proposal for the Public Port Facilities on the Tombigbee River, City of Jackson, Clark County, AL.

Summary: EPA expressed concerns over the potential impacts to the federal portion of this project, i.e., the spur canal. In regard to the City of Jackson's planned phased development, which will convert important bottom land hardwood habit to commercial property, EPA expressed objections and requested additional information.

ERP No. D–COE–L32010–OR Rating EC2, Columbia and Lower Willamette River Federal Navigation Channel, Improvement Channel Deepening, OR and WA.

Summary: EPA expressed concern regarding the lack of information on upland and instream dredged disposal sites; impacts of the new channel and sediment regimes in the Columbia and Willamette Rivers; cumulative impacts from past, present and future activities in the project area; the absence of firm commitments to implement and follow through on the referenced proposed Ecosystem Restoration measures; and the relationship between the proposed dredging activities and the future decision on whether to draw down the John Day Reservoir and selected dams on the Lower Snake River.

ERP No. D–FHW–K50013–00 Rating EC2, US 93 Hoover Dam Bypass Project, Construction of a New Bridge and Highway, Funding, Right-of-Way Easement, US Coast Guard, NPDES and COE Section 404 Permits, Federal Lands—Lake Mead National Recreation Area and Hoover Dam Reservation, Clark County, NV and Mohave County, AZ.

Summary: EPA expressed concerns regarding cumulative effects, indirect impacts (particularly regarding utility relocations), excavation, erosion and runoff impacts, hazardous materials impacts and recreational impacts.

ERP No. D–FTA–L40210–WA Rating EC2, Central Link Light Rail Transmit Project, (Sound Transit) Construct and Operate an Electric Rail Transit System, Funding and COE Section 10 and 404 Permits in the Cities of Seattle, Sea Tac and Tuckwila, King County, WA.

Summary: EPA's concerns relate to the lack of evaluation of options to offset impacts to salmon, ecosystems, and neighborhoods; the need to expand the cumulative effects analysis; and the need to have clearly defined mitigation measures in the EIS.

ERP No. D–IBR–K39056–CA Rating EC2, Contra Loma Reservoir Project,

Future Use and Operation of Contra Costa Water District, COE Section 404 Permit, Contra Costa County, CA.

Summary: EPA expressed concerns over the proposed action's ability to safeguard the drinking water supply. EPA believes that additional information concerning the quality of the water and a more complete analysis of the alternatives is necessary to fully assess the potential environmental and public health impacts.

ERP No. DB–COE–E32022–NC Rating EO1, Manteo (Shallowbag) Bay Project, Enlarging and Deepening Basin at Wanchese, Dare County, NC.

Summary: EPA expressed environmental objections to the construction of the proposed jetty system for Oregon Inlet, and urged the Corps to consider a ''dredging-only'' alternative as means to meet the navigation expectations of local interests.

ERP No. DS–FHW–K40157–CA Rating EO2, CA–1 Improvement, Carmel River Bridge to CA–1/Pacific Grove (Route 68) Interchange, Updated and Additional Information, Funding and COE Section 404 Permit, Monterey County, CA.

Summary: EPA expressed environmental objections due to adverse impacts to wetlands and other jurisdictional waters of the United States, which are subject to regulatory provisions of Section 404 of the Clean Water Act as well as potential impacts to the Monterey Pine Forest.

Final EISs

ERP No. F–BLM–K65205–CA, Telephone Flat Geothermal Power Plant within the Glass Mountain Known Geothermal Resource Area, Construction, Operation and Decommissioning of a 48 megawatt (MW) Geothermal Plant, Modoc National Forest, Siskiyou County, CA.

Summary: EPA expressed continuing concerns regarding the projects purpose and need, inconsistency with prior NEPA analysis, significant unmitigable impacts to Native American traditional cultural values, cumulative impacts from additional development, NEPA segmentation, and prior agreements between Bonneville Power Administration and CalEnergy that may prejudice the Record of Decision. EPA requested that the Record of Decision not be issued until these issues are resolved.

ERP No. F–CGD–K50012–CA, CA–92/San Mateo Hayward Bridge, Improvements to the East Approach and the Trestle Portion of the bridge, Coast Guard Bridge Permit and COE Section 404 Permit, Alameda and San Mateo Counties, CA.

Summary: EPA does not believe its previously expressed concerns were adequately addressed and in particular that the 92/880 Interchange project was not included in the analysis.

ERP No. F–COE–F35045–MN, Duluth-Superior Harbor Phase II, Dredge Material Management Plan, Cities of Duluth, St. Louis County, MN and Douglas County, WI.

Summary: The Final EIS adequately addressed most issues raised previously by EPA. However, EPA continues to be concerned that the sediment quality evaluation analysis was completed only for Hearding Island Hole. EPA requested that before any other deep holes are used for disposal, they should also be assessed.

ERP No. F–COE–F36161–IL, Chicagoland Underflow Plan, McCook Reservoir Construction and Operation for Temporary Retention of Floodwaters in Metropolitan Chicago, Implementation, Cook County, IL.

Summary: The Final EIS adequately responded to most issues raised by EPA. However, EPA continues to be concerned that no information was provided regarding operation and maintenance of the pumps around the reservoir installed to protect the surrounding groundwater.

ERP No. F–COE–K39052–CA, Hamilton Wetland Restoration Project, Tidal Salt Marsh Habitat, Alameda County, CA.

Summary: EPA is pleased with the selection of Alternative 5, which would support a diversity of important wetland habitat types and expressed no objection to the proposed action.

ERP No. F–COE–L03008–AK, Beaufort Sea Oil and Gas Development Northstar Project, Implementation, NPDES Permit, Sea Island, Alaskan Beaufort Sea, Offshore Marine Environment and Onshore Northslope of Alaskan Coastal Plain, AK.

Summary: The final EIS adequately addressed EPA concerns related to oil spill prevention and response issues and the manner in which issues and concerns of the Inupiat Eskimo have been integrated into the NEPA process. However, EPA indicated that the analysis of double-walled pipeline technology should continue to be pursued and that this technology should be evaluated on a case-by-case basis for all subsequent off-shore development projects in the Beaufort Sea.

ERP No. F–FHW–E40755–NC, US 70 Improvements Project, I–40 to the Intersection of US 70 and US 70 Business, Funding and COE Section 404 Permit, Wake and Johnston Counties, NC.

Summary: In general FHWA satisfied EPA's concerns raised at the DEIS stage. EPA's remaining environmental concerns are for maintenance of surface water quality for the endangered dwarf-wedged mussel present in the Swift Creek drainage area which will be subject to Multiple highway projects in the foreseeable future. Also, a likely shortfall is noted in wetlands loss mitigation.

ERP No. F–IBR–K39028–NV, Clark County Wetlands Park Master Plan, Construction and Operation, Erosion Control Structures in Las Vegas Wash, COE Section 404 Permit, Right-of-Way Permit and Endangered Species Act Section 4, Clark County, NV.

Summary: EPA commend the Bureau's efforts to implement a thoughtful Wetlands Park Plan which considers both local community and environmental concerns. EPA has no object to the action as proposed.

ERP No. F–USA–F11036–IN, Newport Chemical Depot, Construction and Operation, Pilot Testing of Neutralization/Supercritical Water Oxidation of VX Agent, Vermillion County, IN.

Summary: EPA's previous objections have been resolved by the inclusion of the requested information. Therefore, EPA has no objection to the proposed action.

ERP No. FA–NOA–K90020–CA, Coastal Pelagic Species Fishery Management Plan Amendment 8, (Formerly Known as Northern Anchovy Fishery Management Plan), Approval and Implementation, WA, CA and OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–TVA–E07013–TN, Kingston Fossil Plant Alternative Coal Receiving Systems, New Rail Spur Construction near the Cities of Kingston and Harriman, Roane County, TN.

Summary: EPA commented favorably on TVA's proposal to use a source of cleaner (low sulfur) coal. However, there are longer coal delivery distances (and attendant air emissions) and train lengths associated with such sources as well as some additional noise from such deliveries and from coal handling, crushing and blending operation.

ERP No. F1–FHW–G40140–TX, Grand Parkway Segment (TX–99) Volume IV, Segment 1–2, Improvement Project from TX–225 to I–10 (East), Funding, COE Section 404 Permit and Right-of-Way Grant, Harris and Chamber Counties, TX.

Summary: Review of the Final EIS has been completed and the project found to

be satisfactory. No formal comment letter was sent to the preparing agency.

Other

ERP No. LD–USA–L11032–AK Rating E02, Alaska Army Lands Withdrawal Renewal for Fort Wainwright and Fort Greely West Training Area, Approval of Permits and Licenses, City of Fairbanks, City of North Pole and City of Delta Junction, North Star Borough, AK.

Summary: EPA expressed environmental objections to the proposed project on the basis of a restricted range of alternatives and the potential environmental impacts. EPA requested more information on existing environmental conditions, more site-specific evaluation of direct and cumulative impacts, and a consideration of additional renewal periods.

Dated: May 18, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–12959 Filed 5–20–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6347–8]

National Drinking Water Advisory Council Small Systems Implementation Working Group; Notice of Conference Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, the ''The Federal Advisory Committee Act,'' notice is hereby given that a conference call of the Small Systems Implementation Working Group of the National Drinking Water Advisory Council (NDWAC) established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*), will be held on May 25, 1999, from 10 a.m.–12 p.m., EDT. The call will be held at the U.S. Environmental Protection Agency, 401 M Street S.W., Room 1132 East Tower, Washington, DC. The meeting is open to the public, but seating will be limited.

The purpose of this meeting is to review draft reports relating to system demographics and regulatory impacts. Statements will be taken from the public on this call as time allows.

For more information please contact Peter E. Shanaghan, Designated Federal Officer, Small Systems Implementation Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street SW, Washington, DC 20460. The telephone number is 202–260–5813 and the e-mail address is shanaghan.peter@epa.gov.

Dated: May 14, 1999.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 99–12942 Filed 5–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6348–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will meet on Wednesday and Thursday, June 9–10, 1999 at the U.S. Environmental Protection Agency (US EPA), Environmental Research Center, Main Auditorium, Route 54 and Alexander Drive, Research Triangle Park, NC 27711. The meeting will begin at 8:30 am and end no later than 5:30 pm on June 9th and begin at 8:00 am and end no later than 4:00 pm on June 10th. All times noted are Eastern Daylight Time. The meeting is open to the public. Due to limited space, seating at the meeting will be on a first-come basis. For further information concerning various aspects of the meeting, please contact the individuals listed below. Important Notice: Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Purpose of the Meeting: Three issues will be discussed at this meeting:

(a) Review of Carbon Monoxide National Ambient Air Quality Standards (NAAQS)—The Committee will begin its review of the Carbon Monoxide National Ambient Air Quality Standards (NAAQS) with a review of the National Center for Environmental Assessment's (NCEA) draft Air Quality Criteria for Carbon Monoxide (External Review Draft) 1999, EPA/600/P–99/001. The Committee will also provide advice and comment to the Office of Air Quality Planning and Standards (OAQPS) on its draft Estimation of Carbon Monoxide Exposures and Associated Carboxyhemoglobin Levels in Denver Residents Using pNEM/CO (Version 2.0) At this meeting (the first in a series of meetings), EPA is seeking advice and comment from CASAC with regard to the scientific soundness of the draft CO Criteria Document for its subsequent use in providing scientific bases for Agency decisions on retention or the possible need for revision to the existing CO NAAQS. The CASAC review will focus on the extent to which the draft document: (1) adequately identifies and poses pertinent issues that need to be addressed in the document; (2) accurately and concisely summarizes relevant key findings from previous CO criteria review(s); (3) accurately and concisely summarizes and assesses important newly available pertinent information (or have any important new studies been omitted?); (4) appropriately interprets and synthesizes the assessed information; and (5) arrives at sound conclusions and findings, taking into account the newly available data assessed. For information on obtaining copies of the two Carbon Monoxide NAAQS documents identified above, or to obtain information concerning contact individuals, please see 64 FR 13198–13199, March 17, 1999.

(b) Consultation on the Diesel Health Assessment—With two past CASAC reviews of the draft Diesel Engine Exhaust Health Assessments, the most recent being on May 5–6, 1998 (see 63 FR 17000, April 7, 1998), NCEA believes that a Consultation with CASAC to review progress on current work to revise the Assessment is timely. The primary focus of this Consultation is on the issues raised earlier by CASAC (see CASAC Report #EPA–SAB–CASAC–99–001, October 7, 1998, available from the Science Advisory Board on its website (WWW.EPA.GOV/SAB) or at: (202) 260–4126, FAX: (202) 260–1889, please give the title and report number and your name and address when requesting a copy via phone or fax) and how NCEA would address these issues. Given the importance of completing the Assessment and providing it to the Agency's Mobile Sources Program, a discussion with CASAC, at this juncture, would be useful to both NCEA and CASAC. The document titled, Discussion Paper for CASAC—Diesel Exhaust Health Assessment, is available on the NCEA page of the Internet at HTTP://WWW.EPA.GOV/NCEA under the What's New and Publications menus. A limited number of paper copies are available from the Technical Information Staff (8623D), NCEA–W; telephone: (202) 564–3261; FAX: (202) 565–0050. If you are requesting a paper

copy, please provide your name, mailing address, and the document title, Discussion Paper for CASAC—Diesel Exhaust Health Assessment. For information on Diesel, contact William Pepelko, NCEA–W, telephone: (202) 564–3309; FAX: (202) 565–0078; or e-mail: <pepelko.william@epa.gov>.

(c) Review of the draft Airborne Particulate Matter (PM) Research Strategy—The Committee last met on November 18 and 19, 1996 to review and provide advice to EPA on the Particulate Matter Research Program Strategy. Since then, the Agency has revised the strategy and has asked that CASAC review the revised document. Interested parties may obtain a copy of the draft Airborne Particulate Matter Research Strategy and the charge to CASAC by contacting Dr. John Vandenberg at: (919) 541–4527; FAX: (919) 541–0642), or e-mail <vandenberg.john@epa.gov>, National Health and Environmental Effects Research Laboratory (NHEERL), USEPA, (M–51A), Research Triangle Park, NC 27711. Technical questions regarding this document should also be directed to Dr. Vandenberg.

The tentative agenda planned for this meeting calls for the Carbon Monoxide issue to be discussed all day on June 9th, the PM Research Strategy on the morning of June 10th, and the Diesel issue on the afternoon of June 10th. A draft agenda will be available approximately two weeks prior to the meeting. See below for information on obtaining a copy.

For Further Information Concerning the Meeting: Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee, Science Advisory Board (1400), Room 3702G, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–5133; fax at (202) 260–7118; or via e-mail at <flaak.robert@epa.gov>. A copy of the draft agenda will be available approximately two weeks prior to the meeting on the SAB website (WWW.EPA.GOV/SAB) or from Ms. Diana Pozun at (202) 260–8432; FAX: (202) 260–7118; or e-mail at: <pozun.diana@epa.gov>.

Members of the public who wish to make a brief oral presentation to the Subcommittee must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Tuesday, June 1, 1999 in order to be included on the Agenda. Public comments will be limited to ten minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

Providing Oral or Written Comments at SAB Meetings: The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889.

Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact Mr. Flaak at least five business days prior to the meeting so that appropriate arrangements can be made.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–12940 Filed 5–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6348–7]

Draft Toxicological Review of Vinyl Chloride and IRIS Summary for Vinyl Chloride

AGENCY: Environmental Protection Agency.

ACTION: Notice of peer-review panel workshop and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing an external peer-review workshop to review the external review draft document titled, Toxicological Review of Vinyl Chloride (NCEA–S–0619) and the companion draft IRIS [Integrated Risk Information System] Summary for Vinyl Chloride. The EPA is also announcing a 30-day public comment period for the draft Toxicological Review. The peer-review workshop will be organized, convened, and conducted by the Syracuse Research Corporation, an EPA contractor for this external scientific peer review. The documents were prepared by the EPA's National Center for Environmental Assessment-Washington Office (NCEA–W) within the Office of Research and Development. NCEA will consider the peer-review advice and public comment submissions in revising the Toxicological Review. While EPA is not soliciting public comments on the draft IRIS Summary, any comments on the draft Toxicological Review received prior to the end of the public comment period also will be considered in revising the IRIS Summary.

DATES: The peer-review panel workshop will begin on Wednesday, June 2, 1999, at 9:00 a.m. and end at 5:30 p.m. Members of the public may attend as observers, and there will be a limited time for comments from the public in the afternoon. The 30-day public comment period begins May 21, 1999, and ends June 21, 1999.

ADDRESSES: The external peer-review panel workshop will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia. The Syracuse Research Corporation, an EPA contractor, is organizing, convening, and conducting the peer-review workshop. To attend the workshop, register by May 27, 1999, by calling Tara Childs, Syracuse Research Corporation, 1215 Jefferson Davis Highway, Arlington VA 22202 at 703–413–9364, or send a facsimile to 703–418–1044. Space is limited, and reservations will be accepted on a first-come, first-served basis. There will be a limited time for comments from the public during the afternoon of the workshop. Please let the Syracuse Research Corporation know if you wish to make comments.

The draft Toxicological Review and the draft IRIS Summary are available on the Internet at http://www.epa.gov/ncea under the What's New and Publications menus. A limited number of paper copies are available from the Technical Information Staff (8623D), NCEA–W; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name,

mailing address, and the document titles, Toxicological Review of Vinyl Chloride (NCEA–S–0619) and IRIS Summary for Vinyl Chloride. Copies are not available from the Syracuse Research Corporation.

Comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, N.W., 5th Floor, Washington, DC 20074; telephone: 202–564–3261; facsimile: 202–565–0050. Comments should be in writing and must be postmarked by June 21, 1999. Please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies. Electronic comments may be emailed to: nceadc-comment@epa.gov.

Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For workshop information, registration, and logistics, contact Tara Childs, Syracuse Research Corporation, 1215 Jefferson Davis Highway, Arlington, Virginia 22202; telephone: 703–413–9364; facsimile: 703–418–1044.

For information on the public comment period, contact William Pepelko, NCEA–W, telephone: 202–564–3309; facsimile: 202–565–0078; or email: pepelko.william@epa.gov.

SUPPLEMENTARY INFORMATION: The Toxicological Review of Vinyl Chloride will provide the scientific basis for classifying the weight-of-evidence for the carcinogenicity of vinyl chloride, deriving cancer potency estimates for both the inhalation and oral route and deriving an oral reference dose (RfD) and inhalation reference concentration (RfC) for the noncancer health risk from exposure to vinyl chloride.

An earlier draft of the Toxicological Review was peer-reviewed at a workshop in June 1997 and has been revised based on comments received. This is the second peer-review workshop and the first public comment period for this document.

The IRIS Summary for Vinyl Chloride is formulated from the contents of the Toxicological Review and is included to provide interested parties with the proposed changes to the Agency's Integrated Risk Information System (IRIS). While EPA is not soliciting comments on the IRIS Summary, any comments on the draft Toxicological Review received during the public comment period also will be considered in revising IRIS the Summary.

Dated: May 18, 1999.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 99–13017 Filed 5–20–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR Part 1320 Authority, Comments Requested

May 12, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 20, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0204.

Title: Section 90.38(b), Physically Handicapped ''Special Eligibility Showing.''

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 20.

Estimated Time Per Response: 5 minutes.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1 hour.

Total Annual Cost: $50.

Needs and Uses: Section 90.38(b) provides that persons claiming eligibility in the Special Emergency Radio Service on the basis of being physically handicapped must present a physician's statement indicating that they are handicapped. Submission of this information is necessary to ensure that the frequencies are reserved for licensing to handicapped individuals. Commission personnel use the data to determine applicant eligibility.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–12798 Filed 5–20–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 12, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it

displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 21, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Certification of Completion of Construction for an Instructional Television Fixed Service Station.

Form Number: FCC 330–A.

Type of Review: New collection.

Respondents: Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 65.

Estimate Time Per Response: 30 mins. (0.5 hrs.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 33 hours.

Total Annual Costs: None.

Needs and Uses: FCC Form 330–A will be used to certify that the facilities as authorized have been completed and that the station is now operational, ready to provide service to the public.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–12796 Filed 5–20–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Submitted to OMB for Review and Approval

May 12, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 21, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0010.

Title: Ownership Report.

Form Number: FCC 323.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 10,020.

Estimated Time Per Response: 0.5–1.0 hours.

Frequency of Response: Biennially; and on occasion report requirements.

Total Annual Burden: 9,106 hours.

Total Annual Cost: $10,259,000.

Needs and Uses: Each licensee is required to file FCC Form 323 every other year on the anniversary date its renewal application is required to be filed. Each permittee is required to file FCC Form 323 within 30 days of the date of the grant by the FCC of an application for original construction permit, transfer of control, or assignment of license. The data are used by FCC staff to determine whether the licensee/permittee is abiding by the multiple ownership requirements as set down by the Commission's Rules and is in compliance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–12797 Filed 5–20–99; 8:45 am]

BILLING CODE 6712–10–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

May 13, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 21, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Direct Broadcast Satellite Public Interest Obligations.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities; Individuals or households.

Number of Respondents: 8.

Estimated Time per Response: 12 hours.

Frequency of Response: Recordkeeping.

Total Annual Burden: 96 hours.

Total Annual Costs: $1,440.

Needs and Uses: The Commission imposes public interest obligations upon providers of Direct Broadcast Satellite (DBS) Services, to grant access for political candidate advertising and to reserve four per cent of channel capacity for educational and informational programming. Once the Report and Order comes into effect, every DBS licensee will be required to maintain a public file at its headquarters that contains: (i) annual measurements of channel capacity and average calculations on which it bases its four percent reservation; (ii) a record of entities to which educational and informational programming capacity is provided, the amount of capacity provided to each entity, the conditions under which it is being provided, and the rates, if any, being paid by each entity; (iii) a record of the entities that have requested capacity and the disposition of those requests; and (iv) a record of all requests for channel time made by political candidates and the disposition of those requests.

Statutory authority for collection of this information is contained in 47 U.S.C. Sections 335, 315, and 312(a)(7).

The information will be used by the FCC and interested members of the public to monitor DBS providers' compliance with public interest obligations. Without such information, the FCC could not determine whether DBS providers have compiled with their obligations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–12851 Filed 5–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1271–DR]

Georgia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1271–DR), dated April 20, 1999, and related determinations.

EFFECTIVE DATE: April 30, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include the Public Assistance program in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1999:

Dooly County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–12923 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1273–DR]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State Kansas (FEMA–1273–DR), dated May 4, 1999, and related determinations.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 7, 1999, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from severe storms and tornadoes on May 3, 1999, and continuing is of sufficient severity and magnitude that the provision of direct Federal assistance to ensure public health and safety is warranted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act'').

Therefore, I amend my declaration of May 4, 1999, to provide that the Federal Emergency Management Agency (FEMA) may reimburse 100 percent of the costs of debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, including direct Federal assistance effective May 4, 1999, through May 7, 1999. This assistance may be provided to all counties designated under the major disaster declaration. You may extend this assistance for an additional period of time, if warranted.

Please notify the Governor of Kansas and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–12915 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1273–DR]

Kansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1273–DR), dated May 4, 1999, and related determinations.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as authorized by the President in a letter dated May 7, 1999, FEMA is extending the time period for debris removal, both by Direct Federal Assistance and reimbursement to State and local governments, at 100 percent Federal funding for eligible debris removal work approved by FEMA through June 3, 1999 for the State of Kansas. The end of the time period for emergency protective measures at 100 percent Federal funding remains at May 7, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director.

[FR Doc. 99–12916 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1273–DR]

Kansas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1273–DR), dated May 4, 1999, and related determinations.

EFFECTIVE DATE: May 11, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 4, 1999:

Reno and Sumner Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–12917 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1273–DR]

Kansas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1273–DR), dated May 4, 1999, and related determinations.

EFFECTIVE DATE: May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas is hereby amended to include Categories C through G under the Public Assistance Program in the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 4, 1999:

Sedgwick County for Categories C through G under the Public Assistance Program (already designated for Individual Assistance and debris removal and emergency protective measures (Categories A and B) under the Public Assistance Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–12918 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1272–DR]

Oklahoma; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA–1272–DR), dated May 5, 1999, and related determinations.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 4, 1999:

Canadian, Craig, Le Flore, Ottawa, and Noble Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–12924 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1272–DR]

Oklahoma; Amendment Number 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–1272–DR), dated May 4, 1999, and related determinations.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident type for this disaster is amended to include flooding. Notice is also given that the incident period for this disaster which was May 3–4, 1999, is now expanded to allow for additional damage resulting from continuing tornadoes, severe storms, and flooding. The incident period for this declared disaster is May 3–5, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–12925 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1272–DR]

Oklahoma; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State Oklahoma (FEMA–1272-DR), dated May 4, 1999, and related determinations.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as authorized by the President in a letter dated May 5, 1999, FEMA is extending the time period for debris removal, both by Direct Federal Assistance and reimbursement to State and local governments, at 100 percent Federal funding for eligible debris removal work approved by FEMA through June 3, 1999 for the State of Oklahoma. The end of the time period for emergency protective measures at 100 percent Federal funding remains at May 7, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–12926 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1272–DR]

Oklahoma; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA–1272–DR), dated May 5, 1999, and related determinations.

EFFECTIVE DATE: May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 4, 1999:

Grady, Lincoln, Logan, and Oklahoma Counties for Categories C through G under the Public Assistance program (already designated for Categories A and B and Individual Assistance).

Canadian, Craig, and Noble Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–12927 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1272–DR]

Oklahoma; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA–1272–DR), dated May 5, 1999, and related determinations.

EFFECTIVE DATE: May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 4, 1999:

Caddo, Cleveland, Kingfisher, McClain, and Pottawatomie Counties for Categories C through G under the Public Assistance program (already designated for Individual Assistance and Categories A and B under the Public Assistance Program).

Okmulgee and Payne Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–12929 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1275–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1275–DR), dated May 12, 1999, and related determinations.

EFFECTIVE DATE: May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 12, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe storms, tornadoes and flooding on May 5, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul W. Fay of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

Cheatham, Chester, Davidson, Decatur, Dickson, Hardeman, Hardin, Henderson, Hickman, Houston, Humphreys, Lawrence, McNairy, Perry, Stewart, White, and Williamson Counties for Individual Assistance and Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–12922 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1274–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1274–DR), dated May 6, 1999, and related determinations.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe storms and tornadoes on May 4, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act'').

I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, and Hazard Mitigation in the designated areas. Further, you are authorized to provide other categories of assistance under the Public Assistance program, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Sharon L. Stoffel of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

Bowie County for Individual Assistance and Debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–12919 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1274–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1274–DR), dated May 6, 1999, and related determinations.

EFFECTIVE DATE: May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6,1999:

Red River County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–12920 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1274–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1274–DR), dated May 6, 1999, and related determinations.

EFFECTIVE DATE: May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas is hereby amended to include Categories C through G under the Public Assistance Program in the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6,1999:

Bowie County for Categories C through G under the Public Assistance Program (already designated for Individual Assistance and debris removal and emergency protective measures (Categories A and B) under the Public Assistance Program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–12921 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Advisory Committee for the National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C. App.), announcement is made of the following committee meeting:

Name: Advisory Committee for the National Urban Search and Rescue Response System.

Date of Meeting: July 29–30, 1999.

Place: Cavanaughs Olympus Hotel, 161 West 600 South, Salt Lake City, UT 84101.

Time: July 29, 1999: 8:00 a.m.—5:00 p.m.; July 30, 1999: 8:00 a.m.—5:00 p.m.,

Proposed Agenda: The committee will be provided with a program update that will address the status of program reviews and ongoing projects, functional training and program support efforts, and budgets for the Urban Search and Rescue Program. The committee will review and discuss current Working Group activities. Other items for discussion may include documentation, Task Force spending, functional training methodologies, and program strategic planning and budgeting.

The meeting will be open to the public, with approximately 20 seats available on a first-come, first-served basis. All members of the public interested in attending should contact Mark R. Russo, at 202–646–2701.

Minutes of the meeting will be prepared and will be available for public viewing at the Federal Emergency Management Agency, Operations and Planning Division, Response and Recovery Directorate, 500 C Street, SW, Washington DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: May 17, 1999.

Lacy E. Suiter,

Executive Associate Director, Response & Recovery Directorate.

[FR Doc. 99–12928 Filed 5–20–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 14, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. HCNB Bancorp, Inc., Rockville, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Harbor Capital National Bank, Rockville, Maryland (in organization).

2. M&F Bancorp, Inc., Durham, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Merchants and Farmers Bank, Durham, North Carolina.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. South Central Bancshares of Kentucky, Inc., Horse Cave, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of South Central Bancshares of River City, Inc., Owensboro, Kentucky, and thereby indirectly acquire South Central Bank of Daviess County, Inc., Owensboro, Kentucky; First United Bancshares, Inc., Glasgow, Kentucky, and thereby indirectly acquire South Central Bank of Barren County, Inc., Glasgow, Kentucky; and United Central Bancshares, Inc., Bowling Green, Kentucky, and thereby indirectly acquire South Central Bank of Bowling Green, Inc., Bowling Green, Kentucky.

In connection with this application, South Central Bancshares of River City, Inc., Owensboro, Kentucky; also has applied to become a bank holding company by acquiring 100 percent of the voting shares of South Central Bank of Daviess County, Inc.,Owensboro, Kentucky.

Board of Governors of the Federal Reserve System, May 17, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–12833 Filed 5–20–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-12291) published on page 26759 of the issue for Monday, May 17, 1999.

Under the Federal Reserve Bank of Chicago heading, the entry for Republic Bancorp, Ann Arbor, Michigan, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Republic Bancorp, Ann Arbor, Michigan; to acquire D&N Bank, Hancock, Michigan, upon conversion from a federally-chartered savings bank to a state chartered savings bank.

Comments on this application must be received by June 1, 1999.

Board of Governors of the Federal Reserve System, May 17, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–12834 Filed 5–20–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

[Docket No. R–1037]

Modifying Federal Reserve ACH Operations and Pricing Practices Relative to Private-Sector ACH Operators

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; request for comments.

SUMMARY: The Board requests comment on the benefits and drawbacks of modifying the Federal Reserve Banks' pricing practices and deposit deadlines for ACH transactions they exchange with private-sector ACH operators. These modifications may have implications for competition in the provision of ACH services, for the efficiency of the ACH system, and for long-term ACH volume growth.

DATES: Comments must be submitted on or before August 6, 1999.

ADDRESSES: Comments should refer to Docket No. R–1037 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. on weekdays, and to the security control room at all other times. The mail room and the security control rooms are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP–500, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in Section 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Manager (202/452–2660); Michele Braun, Project Leader (202/452–2819); or Jeffrey S. H. Yeganeh, Senior Financial Services Analyst (202/728–5801); for the hearing impaired *only*, contact Diane Jenkins, Telecommunication Device for the Deaf (TDD) (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Reserve Banks are collectively the largest ACH operator, processing more than 80 percent of commercial interbank ACH transactions as well as all ACH transactions initiated by the Federal government. Private-sector ACH operators (PSOs) process the remaining transactions and typically provide services, including processing and settling ACH transactions, similar to those offered by the Reserve Banks.[1] PSOs also use the Reserve Banks' ACH

[1] The National Automated Clearing House Association is currently considering modifications to its definition of an ACH operator. For the purposes of this notice, a PSO is considered to be any entity that provides ACH services similar to those of the Reserve Banks. Currently, Electronic Payments Network (formerly, New York Automated Clearing House), Visa, and American Clearing House are considered, within the industry, to be private-sector operators.

services for processing transactions in which either the originating depository financial institution (ODFI) or receiving depository financial institution (RDFI) is not their customer.

The Reserve Banks' relatively large market share may be attributed, in part, to their involvement in creating a nationwide ACH network, in the early 1970s, for exchanging transactions between all depository institutions and to substantial scale and scope economies in processing ACH transactions.[2] Some industry representatives, however, believe that the Reserve Banks' price and service level policies have, at least in part, contributed to the Reserve Banks' dominant ACH market share by impeding competition and threatening the private-sector ACH operators' long-term viability. In particular, the PSOs, the National Automated Clearing House Association (NACHA), and the Financial Services Roundtable (formerly, the Bankers Roundtable) maintain that the Reserve Banks' policies, which treat PSOs as the agents of the ODFI or RDFI, have created barriers to open and vigorous competition among ACH operators.[3] Specifically, the PSOs maintain that the Reserve Banks' price structure and deposit deadlines do not permit the PSOs to compete effectively in providing ACH services to depository institutions.[4]

The Federal Reserve Board historically has stressed the benefits of competition in the provision of payment services. In a 1990 white paper on the Federal Reserve in the payments system, the Board stated that ''the role of the Federal Reserve in providing payments services is to promote the integrity and efficiency of the payments mechanism and to ensure the provision of payment services to all depository institutions on an equitable basis, and to do so in an atmosphere of competitive fairness.''[5] In addition, the Board's standards for priced services activities note that ''Federal Reserve actions are implemented in a manner that ensures fairness to other providers of payment services.''[6]

II. Current Federal Reserve Practices

The Reserve Banks have generally treated PSOs similar to third-party processors, that is, as agents of the depository institutions for which they send or receive items.[7] Further, the Reserve Banks make little distinction between PSOs and third-party processors in processing ACH transactions. As a result, the Reserve Banks' pricing of ACH services has not differentiated between PSOs, third-party processors, and depository institutions.

The Reserve Banks offer depository institutions ACH services under terms established in the Reserve Banks' ACH operating circular, which is a contractual arrangement, and charge fees for ACH services based on published fee schedules. For each ACH transaction that they process, the Reserve Banks consider both the ODFI and RDFI to be their customers and charge each of them a per-item fee. Further, the Reserve Banks charge a per-file fee for each ACH file they receive.[8] The Reserve Banks also assess monthly account servicing fees to each institution whose ACH transactions they process. In addition to ACH service fees, the Reserve Banks assess electronic connection fees based on the type of connection an institution maintains for sending and receiving ACH transactions as well as other transactions or information. The Reserve Banks use their reserve account posting capability to automatically debit the accounts designated by each ODFI and RDFI, either their own or those of correspondents, for the purpose of settling ACH transactions and fees.

On the other hand, PSOs do not have the similar contractual arrangements to charge ODFIs or RDFIs that are not their customers. That is, PSOs are not able to charge an RDFI per-item fees for transactions they transmit through the Reserve Banks nor are PSOs able to charge an ODFI per-item fees for transactions they receive from the Reserve Banks. Further, the Reserve Banks do not pay file fees for files provided to the PSOs.

III. Request for Comment

A. Reserve Bank ACH Customers

PSOs maintain that, to the extent that depository institutions send or receive their ACH transactions through a PSO, the institutions are PSO customers and not Reserve Bank customers. The Federal Reserve's authority to provide payment services, however, is limited by law to services provided to depository institutions.[9] Further, many depository institutions send transactions directly to and receive transactions directly from both the Reserve Banks and PSOs. Thus, Reserve Banks consider all depository institutions designated as the ODFI or RDFI in ACH transactions they process to be Reserve Bank customers, and the PSOs involved in the transactions to be agents of the ODFI or RDFI. Given the limitations on the types of entities that are eligible to receive Reserve Bank payment services, the Board requests comment on how the ACH service might be structured to address the differences in the way that the Reserve Banks' and PSOs' customer bases are defined. Specifically, the Board is interested in commenters' views on whether the Reserve Banks should continue to consider the ODFI and RDFI for ACH transactions they process to be their customers, and charge them accordingly, even though the institution sent the transactions through or received the transactions from a PSO.

B. Price Structure

The PSOs maintain that modifications to the Reserve Banks' price structure would permit them to compete more effectively in providing ACH services to depository institutions. The Monetary Control Act (MCA) and the Board's pricing principles require that fees for the ACH service be set so that revenues

[2] Other factors may include (1) the Reserve Banks' role as processors of all federal government ACH payments, (2) insufficient total ACH volume during the early years of service to viably support multiple national ACH operators, (3) the Reserve Banks' subsidy of their ACH service until the mid-1980s, (4) the generally high quality of the Reserve Banks' ACH service, and (5) the previous lack of an efficient Reserve Bank net settlement service for private-sector interdistrict clearing arrangements involving a large number of settling participants.

[3] *Vision 2000 Task Force Recommendations*, HA, 1997; *Role of the Federal Reserve and the Banking Industry in the Retail Electronic Payments Systems of the Future*, Bankers Roundtable, April 1998.

[4] The PSOs, other private-sector clearing organizations, and industry trade groups had also indicated that the design of the Reserve Banks' net settlement services created an additional barrier to private-sector competition with the Reserve Banks. The Board believes that the Reserve Banks' new enhanced net settlement service, which was introduced in March 1999, addresses the limitations inherent in their net settlement services and should provide an effective mechanism for the settlement of private-sector clearing arrangements, including large interdistrict settlement arrangements (63 FR 60000, November 6, 1998).

[5] *The Federal Reserve in the Payments System*, Federal Reserve Regulatory Service 7–139.

[6] *Standards Related to Priced-Services Activities of the Federal Reserve Banks*, Federal Reserve Regulatory Service 7–136.

[7] The exception to this practice was the arrangement between the Federal Reserve Bank of New York and Electronic Payments Network (EPN) from 1975 through 1996. During this period, the New York Reserve Bank did not provide commercial ACH services and EPN processed almost all commercial items for Second District depository institutions.

[8] The sending point for an ACH file is assessed a per-file fee. The sending point could be an ODFI that sends its file directly to the Reserve Banks, or a third-party processor or PSO that is acting as agent for the ODFIs whose transactions are in the file.

[9] A Reserve Bank may also provide services to a limited set of other institutions, such as state member banks that are not defined as depository institutions and other entities if the Reserve Bank is directed to do so as fiscal agent of the United States.

match costs. The Reserve Banks set their fees to meet these requirements. Thus, any modifications that reduce the revenues or increase the costs of the ACH service would have to be offset by commensurate increases in revenues elsewhere in the ACH service.

The Board requests comment on whether the Reserve Banks should charge lower fees for ACH transactions that are also processed by a PSO than they do for ACH transactions in which the Reserve Banks are the only ACH operator, and if so, the basis that should be used to charge the different fees.[10] With the possible exception of customer service costs, the Reserve Banks' costs for handling ACH transactions that are also processed by a PSO do not currently differ from their costs for handling other ACH transactions. Thus, there may be little cost justification for the Reserve Banks to offer lower fees to PSOs, unless the Reserve Banks offered different ACH service levels for transactions also involving a PSO. Different service levels might eliminate some of the processes that the Reserve Banks currently perform to process ACH transactions transmitted through PSOs, which in turn could provide a justification for lower fees.

In addition, the Board requests comment on whether the Reserve Banks should pay transaction fees to PSOs that send files to the Federal Reserve and transaction and file fees to PSOs that receive files from the Federal Reserve. A PSO's costs for handling ACH transactions that are also processed by the Reserve Banks likely differ from the costs for handling other ACH transactions only with respect to costs related to customer service and settlement. The Board is interested in commenters' views on what services PSOs provide that would justify the payment of fees to PSOs, on whether Reserve Banks should pay fees to PSOs, and on whether, and how, market discipline may constrain the fees charged by PSOs.

The Reserve Banks assess an ACH monthly account servicing fee for each routing number that a depository institution elects to have included in the FedACH customer directory. The Reserve Banks must maintain routing numbers for depository institutions served by PSOs to provide processing, routing, accounting, and settlement services for ACH transactions exchanged between PSO and Reserve Bank customers, and charges this fee to recover associated costs. NACHA and the PSOs believe that it is inappropriate for the Reserve Banks to assess monthly account servicing fees to ODFIs and RDFIs that do not send transactions directly to or receive transactions directly from the Reserve Banks. The PSOs maintain that the imposition of this fee on their customers allows the Reserve Banks to establish lower transaction fees and competitively disadvantages the PSOs. The Board requests comment on whether the Reserve Banks should continue to assess this fee to customers that use PSOs to send transactions to and receive transactions from the Reserve Banks and, if not, the rationale for eliminating the fee for the PSOs' customers.

Any of the changes to the ACH system's price structure discussed above could lead to a reduction in Reserve Bank net revenue either through reductions in Reserve Bank fees or increases in Reserve Bank costs. To fulfill the requirements of the MCA and the Board's pricing principles, however, any reduction in ACH net revenues would have to be recouped elsewhere in the ACH service. Thus, it is likely that fees assessed to some Reserve Bank customers might decline while fees assessed to other Reserve Bank customers might increase.

C. Deposit Deadlines and Processing Schedule

The Board requests comment on the benefits and drawbacks of the Reserve Banks establishing different deposit and delivery deadlines for PSOs and depository institutions. The PSOs maintain that the Reserve Banks' deposit and delivery deadlines place them at a competitive disadvantage. To meet Reserve Bank deposit deadlines, PSOs must establish earlier deposit deadlines and later delivery schedules for their customers than those offered by the Reserve Banks to their customers. For example, the Reserve Banks have established a 3:00 a.m. eastern time deadline for the deposit of ACH transactions for all depositors, and make those ACH transactions available to the RDFI or its agent (including a PSO) by 6:00 a.m. eastern time. If the Reserve Banks were to offer different deposit and delivery deadlines to PSOs and depository institutions, PSOs would be able to establish deadlines for their customers that would be equivalent to those offered by the Reserve Banks. If the deadlines were changed, however, the Reserve Banks either would have to move the depository institution deposit deadline to earlier in the evening or reduce the time they have to process ACH files. In either case, the level of service offered to depository institutions that deal with the Reserve Banks directly may be reduced.

D. Correspondent Banks and Third-party Processors

If the Reserve Banks were to modify their price structure or deadlines to treat transactions also processed by PSOs differently, the Board requests comment on whether this treatment should be limited to transactions processed by PSOs or expanded to encompass other ACH transactions, such as those sent or received by correspondent banks or third-party processors. The Board is interested in commenters' views on the extent to which the arguments to modify Reserve Bank practices regarding PSOs also apply to other entities that act as sending and receiving points for multiple institutions. The Board requests comment on how the Reserve Banks should determine the entities that qualify for treatment as PSOs if the Reserve Banks were to modify the terms of their ACH services to treat transactions involving PSOs (but not correspondent banks and third-party processors) differently.

E. Other Implications

Finally, the Board requests comment on the implications on competition, the efficiency of the ACH system, and on overall ACH volume growth should the Reserve Banks modify their price structure or deadlines to treat transactions processed by PSOs differently than those received from or sent to other parties. One of the Reserve Banks' primary objectives is to foster competition, improve the efficiency of the payments mechanism, and lower the cost of these services to society at large, while maintaining the integrity and reliability of the payments mechanism and providing an adequate level of service nationwide. To the extent that commenters are suggesting modifications to the Reserve Banks' ACH service, the Board requests that they indicate whether and how those modifications are likely to affect competition in the provision of ACH services, the efficiency of the ACH system, and the growth of the ACH system.

IV. Summary of Comments Requested

To assist commenters in the preparation of their responses to this notice, a summary of the questions on which the Board is requesting comment follows:

[10] Some ACH transactions processed by the Reserve Banks involve two PSOs—a sending PSO and a receiving PSO. Other ACH transactions involving two PSOs are settled through the PAX (Private-Sector ACH Exchange) network without Reserve Bank involvement as ACH operator.

A. Reserve Bank ACH Customers

1. Given the limitations on the types of entities that are eligible to receive Reserve Bank payment services, how should the ACH service be structured to address the differences in the way that the Reserve Banks' and PSOs' customer bases are defined?

2. Should the Reserve Banks continue to consider the ODFI and RDFI for ACH transactions they process to be their customers, and charge them accordingly, even though the institution sent the transactions through or received the transactions from a PSO? If not, why not?

B. Price Structure

1. Should the Reserve Banks charge lower fees for ACH transactions that are also processed by a PSO than they do for ACH transactions in which the Reserve Banks are the only ACH operator? If so, on what basis should the different fees be set? For example, should the Reserve Banks offer different ACH service levels for transactions also involving a PSO?

2. Should the Reserve Banks pay transaction fees to PSOs that send files to the Federal Reserve and transaction and file fees to PSOs that receive files from the Federal Reserve? What services do the PSOs provide to Reserve Banks that would justify the payment of fees to PSOs? Would market discipline constrain the fees charged by PSOs to Reserve Banks? If so, how?

3. Should the Reserve Banks continue to assess the ACH account servicing fee to customers that exclusively use PSOs to send transactions to and receive transactions from the Reserve Banks? If not, what would be the rationale for eliminating the fee for the PSOs' customers?

C. Deposit Deadlines and Processing Schedule

1. What are the benefits and drawbacks of the Reserve Banks establishing different deposit and delivery deadlines for PSOs and depository institutions?

D. Correspondent Banks and Third-party Processors

1. If the Reserve Banks were to modify their price structure or deadlines to treat transactions also processed by PSOs differently, should this treatment be limited to transactions processed by PSOs or expanded to other ACH transactions, such as those sent or received by correspondent banks or third-party processors? Why or why not? Do the arguments to modify Reserve Bank practices regarding PSOs also apply to other entities that act as sending and receiving points for multiple institutions? Why or why not?

2. How should the Reserve Banks determine the entities that qualify for treatment as PSOs if the Reserve Banks were to modify the terms of their ACH services to treat transactions involving PSOs (but not correspondent banks and third-party processors) differently?

E. Other Implications

1. What are the implications on competition, the efficiency of the ACH system, and overall ACH volume growth if the Reserve Banks were to modify their price structure or deadlines to treat transactions processed by PSOs differently than those received from or sent to other parties?

2. To the extent that you are suggesting modifications to the Reserve Banks' ACH service, please indicate whether and how those modifications are likely to affect competition in the provision of ACH services, the efficiency of the ACH system, and the growth of the ACH system.

By order of the Board of Governors of the Federal Reserve System, May 17, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–12895 Filed 5–20–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, May 26, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–13005 Filed 5–19–99; 11:26 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Projects 1. Evaluation of the Proposed Cash and Counseling Demonstration—New—Cash and Counseling is a consumer directed care model for individuals with physical or development disabilities. A demonstration project implementing this model is being evaluated by the Office of the Assistant Secretary for Planning and Evaluation. This portion of the evaluation consists of four information collection instruments. *Respondents:* Individuals or households, for-profit, non-profit institutions; Burden Information for Informal Caregiver Survey—*Number of Respondents:* 8,000; *Burden per Response:* .38 hours; *Total Burden for Informal Caregiver Survey:* 3,040 hours—Burden Information for Paid Worker Survey—*Number of Respondents:* 800; *Burden per*

Response: .5 hours; *Total Burden for Paid Worker Survey:* 400 hours—Burden Information for Consultant Survey—*Number of Respondents:* 400; *Burden per Response* .58 hours; *Total Burden for Consultant Survey:* 200 hour—Burden Information for Ethnographic Discussion Guide—*Number of Respondents:* 300; *Burden per Response:* 1 hours; *Total Burden for Ethnographic Discussion Guide:* 300 hours—*Total Burden:* 3,940 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: May 13, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–12806 Filed 5–20–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Availability of Draft Guidelines for Prevention of Opportunistic Infections in Persons Infected With Human Immunodeficiency Virus

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of a draft document entitled ''1999 USPHS/IDSA Guidelines for the Prevention of Opportunistic Infections in Persons Infected with Human Immunodeficiency Virus,'' prepared by representatives of the U.S. Public Health Service (USPHS), the Infectious Diseases Society of America (IDSA), and additional representatives of Federal agencies, universities, professional societies, and community organizations, for review and comment.

DATES: To ensure consideration, written comments on this draft document must be received on or before June 1, 1999.

ADDRESSES: The draft document is available on the World-Wide Web site of the AIDS Treatment and Information Service (*http://www.hivatis.org*). Requests for hardcopies of the document may be submitted to the Division of HIV/AIDS Prevention, Mailstop E–49, Centers for Disease Control and Prevention, Atlanta, GA 30333; telephone (404) 639–2072, FAX (404) 639–2007. Written comments on this draft document should be sent to the above address for receipt by June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Division of HIV/AIDS Prevention, National Center for HIV, STD, and TB Prevention, Mailstop E–49, Centers for Disease Control and Prevention, Atlanta, GA 30333; telephone (404) 639–2072, FAX (404) 639–2007.

SUPPLEMENTARY INFORMATION: Opportunistic infections constitute a major cause of morbidity and mortality in persons infected with human immunodeficiency virus. The draft 1999 Guidelines, prepared by the United States Public Health Services, the Infectious Diseases Society of America, and representatives of Federal agencies, universities, professional societies, and community organizations, represent an update of guidelines published in 1995 and in 1997. They include recommendations to prevent major parasitic, bacterial, mycotic, and viral infections in the era of highly active antiretroviral therapy (HAART). They address prevention of disease by chemoprophylaxis and vaccination and prevention of exposure to opportunistic pathogens. They also address discontinuing chemoprophylaxis against specific pathogens when the CD4+ lymphocyte count has increased in response to HAART.

Dated: May 17, 1999.

Joseph R. Carter,

Associated Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–12835 Filed 5–20–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Notice of Program Announcement No. ACF/ACYF 99–04]

Fiscal Year 1999 Discretionary Announcement for Head Start Partnerships With Historically Black Colleges and Universities

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), DHHS.

ACTION: Notice of announcement of the availability of funds and request for applications for training grants for Historically Black Colleges and Universities in Partnership with Head Start and Early Head Start Grantees.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF) announces the availability of $875,000 in funds for Head Start Training Partnerships with Historically Black Colleges and Universities (HBCUs). The purpose is to utilize the capability of these institutions of higher education to improve the quality and long term effectiveness of Head Start and Early Head Start grantees and delegate agencies by developing models of academic training and forming partnerships between the HBCUs and Head Start and Early Head Start. Priority will be given to HBCUs that propose partnerships that will focus on increasing the number of center-based teachers with AA, BA or advanced degrees in early childhood education.

DATES: The closing date and time for receipt of applications is 5:00 p.m. (Eastern Time Zone) July 20, 1999.

FOR FURTHER INFORMATION: A copy of the program announcement and necessary application forms can be obtained by contacting: HBCUs, ACYF Operation Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209. The telephone number is 1–800–351–2293 (acyf).

Copies of the program announcement can be downloaded from the Head Start web site at: *www.acf.dhhs.gov/programs/hsb.*

Eligible Applicants: Historically Black Colleges and Universities as defined in Executive Order 12876. Current grantees are eligible to apply.

Project Duration: Awards, on a competitive basis, will be for a one-year budget period; project periods will be for four years.

Federal Share of Projects. The maximum Federal share for each project is not to exceed $150,000 per year. Although there are no matching requirements, applicants are encouraged to provide non-Federal contributions to the project.

Estimated Number of Projects to be Funded. It is anticipated that up to eight projects will be funded.

Statutory Authority. The Head Start Act, as amended, 42 U.S.C.9831 *et seq.*

(Catalog of Federal Domestic Assistance: Number 93.600, Head Start)

Dated: April 29, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 99–12874 Filed 5–20–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 78N–0038]

Revocation of Advisory Opinion Entitled ''FD&C Act Trade Correspondence 61''

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; revocation.

SUMMARY: The Food and Drug Administration (FDA) is revoking an advisory opinion entitled ''FD&C Act Trade Correspondence, TC–61,'' (hereinafter called TC–61) dated February 15, 1940, because it is out of date with current scientific knowledge and is superseded by the final rule for over-the-counter (OTC) sunscreen drug products. As an advisory opinion, this correspondence was not published in the **Federal Register**.

EFFECTIVE DATE: JUNE 21, 1999.

FOR FURTHER INFORMATION CONTACT: John D. Lipnicki, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION: TC–61 is a 1940 advisory opinion regarding the drug and/or cosmetic status of sunburn and suntan preparations. TC–61 states that a product promoted for prevention of damage from the sun is a drug, and a product that is promoted solely for the purpose of acquiring an even tan can be considered a cosmetic. The agency updated this policy in 1976, by stating that a product containing a sunscreen ingredient, even when labeled solely as a tanning aid, is both intended and understood to be a sunburn preventive and, therefore, is a drug under the Federal Food, Drug, and Cosmetic Act (the act).

In the **Federal Register** of May 12, 1993 (58 FR 28194), FDA published a proposed rule for OTC sunscreen drug products. That document included a proposal to revoke TC–61 (58 FR 28204). One comment was received in response to the proposal to revoke TC–61. That comment did not change the agency's position and is addressed elsewhere in the rule section of this issue of the **Federal Register**. Therefore, under the act and under authority delegated to the Commissioner of Food and Drugs, TC–61 is revoked.

Dated: May 10, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–12854 Filed 5–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0107]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Determining Third Party Liability (TPL) State Plan Preprint and Supporting Regulations in 42 CFR 433.138; *Form No.:* HCFA–R–0107 (OMB# 0938–0502); *Use:* In the past, many third party resources were not diligently pursued by State governments. In an effort to improve program efficiencies and reduce Medicaid expenditures HCFA implemented TPL procedures. The collection of TPL information results in significant program savings to the extent that liable third parties can be identified and payments can be made for services that would otherwise be paid for by the Medicaid program.; *Frequency:* On occasion; *Affected Public:* Individuals or households, Federal Government, and State, Local, or Tribal Government; *Number of Respondents:* 1,900,000; *Total Annual Responses:* 1,900,000; *Total Annual Hours:* 329,965.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 13, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–12808 Filed 5–20–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–20]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has

reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* versus *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number). HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Mr. Jeff Holste, U.S. Army Center for Public Works, Installation Support Center, Facilities Management, 7701 Telegraph Road, Alexandria, VA 22315–3862; (703) 428–6318; COE: Ms. Shirley Middleswarth, Army Corps of Engineers, Management & Disposal Division, Pulaski Building, room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–0515; INTERIOR: Ms. Lola Kane, Department of the interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; VA: Mr. Anatolij kushnir, Director, Asset and Enterprise Development Service, 181B, Department of Veterans Affairs, 811 Vermont Avenue, NW, Room 419, Lafayette Bldg., Washington, DC 20420; (202) 565–5941; (These are not toll-free numbers).

Dated: May 13, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 5/21/99

Suitable/Available Properties

Buildings (by State)

Kentucky

Bldg.
Rough River Lake Project
Louisville Co: Breckenridge KY 40232–
Landholding Agency: COE
Property Number: 31199920001
Status: Excess
Comment: 496 sq. ft., concrete block, most recent use—water treatment, off-site use only

Unsuitable Properties

Buildings (by State)

California

Bldg. 675
Naval Surface Reserve Force
Terminal Island Co: CA 89104–
Landholding Agency: Navy
Property Number: 77199920086
Status: Unutilized
Reason: Extensive deterioration

Florida

Bldg. 648
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920087
Status: Unutilized
Reason: Secured Area

Bldg. 1882
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920088
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 3228
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920089
Status: Unutilized
Reason: Secured Area

Bldg. 3604
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920090
Status: Unutilized
Reason: Secured Area

Bldg. 3605
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920091
Status: Unutilized
Reason: Secured Area

Bldg. 3626
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920092
Status: Unutilized
Reason: Secured Area

Bldg. 3674
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920093
Status: Unutilized
Reason: Secured Area

Hawaii

Bldg. 1385
Naval Public Works Center
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199920094

Status: Excess
Reason: Secured Area

Kentucky

9 Bldgs.
Wondering Woods
Mommoth Cave National Park
Mammoth Cave Co Barren KY 42259–
Landholding Agency: Interior
Property Number: 61199920002
Status: Excess
Reason: Extensive deterioration

Massachusetts

Westview Street Wells
Lexington Co: MA 02173–
Landholding Agency: VA
Property Number: 97199920001
Status: Unutilized
Reason: Extensive deterioration

Ohio

Bldg. 116
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199992002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 217
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 402
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 105
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920005
Status: Unutilized
Reason: Extensive deterioration

Washington

Bldg. U515A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920124
Status: Excess
Reason: Gas chamber

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 001PE, 001ED, 003ED, 002ED
Landholding Agency: Army
Property Number: 21199920125
Status: Excess
Reason: Extensive deterioration

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 004NA, 007NA, 008NA, 005PJ
Landholding Agency: Army
Property Number: 21199920126
Status: Excess
Reason: Extensive deterioration

5 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: F0011, M0014, F0016–F0019
Landholding Agency: Army
Property Number: 21199920127
Status: Excess
Reason: Extensive deterioration

5 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0101, C1230, C1316, D1103, A0102
Landholding Agency: Army
Property Number: 21199920128
Status: Excess
Reason: Extensive deterioration

8 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0104, A0108, A0220, B1131, C1203, C1218, D1102, D1131
Landholding Agency: Army
Property Number: 21199920129
Status: Excess
Reason: Extensive deterioration

3 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0105, C1217, C0112
Landholding Agency: Army
Property Number: 21199920130
Status: Excess
Reason: Extensive deterioration

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0124, A0133, D1114, D1124, A0135, J0200, J0202
Landholding Agency: Army
Property Number: 21199920131
Status: Unutilized
Reason: Extensive deterioration

Bldgs. A0205, A0310
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920132
Status: Excess
Reason: Extensive deterioration

Bldg. A0338
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920133
Status: Excess
Reason: Extensive deterioration

Bldg. E0390
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920134
Status: Unutilized
Reason: Extensive deterioration

27 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: B0405, B0407–B0409, B0429, B0432, B0504–B0505, B0508, B0529, B0532–B0533, B0604–B0605, B0607–B0609, B0705, B0709, B0728–B0729, B0732, B0733, B0804, B0805, B0828, B0829
Landholding Agency: Army
Property Number: 21199920135
Status: Excess
Reason: Extensive deterioration

12 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0440, A0519, A0619, C0309, C0320, C0409, C1009, C1020, D0711, D0722, D0811, D0822
Landholding Agency: Army
Property Number: 21199920136
Status: Excess
Reason: Extensive deterioration

23 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0441, B0803, B0810, B0827, B0834, C0301, C0308, C0321, C0328, C1001, C1021, C1028, C1307, D0703, D0710, D0727, D0734, D0803, D0810, D0827, D0834, D1127, D1142
Landholding Agency: Army
Property Number: 21199920137
Status: Excess
Reason: Extensive deterioration

Bldg. A0456
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920138
Status: Excess
Reason: Extensive deterioration

19 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0536, A0537, A0540, A0451, A0541, A0602–A0604, A0606, A0607, A0610, A0611, A0632, A0633, A0636, A0637, A0640, A0641, A0906
Landholding Agency: Army
Property Number: 21199920139
Status: Excess
Reason: Extensive deterioration

12 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0454, A0455, A0802, A0803, A0806, A0807, A0828, A0829, A0832, A0833, A0907, A0933
Landholding Agency: Army
Property Number: 21199920140
Status: Excess
Reason: Extensive deterioration

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0518, A0530, B0811, B0822, B0911, C0614, A0638
Landholding Agency: Army
Property Number: 21199920141
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0639, A0827, A0901, A0908, 04041, 04042
Landholding Agency: Army
Property Number: 21199920142
Status: Excess
Reason: Extensive deterioration

33 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: D0704–D0709, D0728–D0733, D0804–D0809, D0828–D0833, D1106,

D1117–D1118, D1143, D1151, D1158–D1160, D1163
Landholding Agency: Army
Property Number: 21199920143
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A0711, B0802, A0801, A0909, A0834, A0934, A0813, A0826, A0913, A0926
Landholding Agency: Army
Property Number: 21199920144
Status: Excess
Reason: Extensive deterioration

9 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: B0808, B0809, B0832, B0833, A0814, A0815, A0824, A0914, A0915
Landholding Agency: Army
Property Number: 21199920145
Status: Excess
Reason: Extensive deterioration

Bldgs. C0860, A0906
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920146
Status: Excess
Reason: Extensive deterioration

Bldgs. A1006, E1006
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920147
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 1011, 1016, C1016, 1034, 1036, 1037
Landholding Agency: Army
Property Number: 21199920148
Status: Excess
Reason: Extensive deterioration

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 1035, 2608–2612, 6194
Landholding Agency: Army
Property Number: 21199920149
Status: Excess
Reason: Extensive deterioration

8 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A1101, A1106, B0101, A1109, A1453, A1110, A1111, A1112
Landholding Agency: Army
Property Number: 21199920150
Status: Excess
Reason: Extensive deterioration

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: D1107, D1152, E1121, D1125, D1132, D1135, D1143
Landholding Agency: Army
Property Number: 21199920151
Status: Excess
Reason: Extensive deterioration

Bldgs. D1156, D1162
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920152
Status: Excess
Reason: Extensive deterioration

Bldgs. 1202, B1202, 1203
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920153
Status: Excess
Reason: Extensive deterioration

Bldgs. 1206, C1209, B1210
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920154
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: C1224, C1227 C1234, C1237, D1139, C1275
Landholding Agency: Army
Property Number: 21199920155
Status: Unutilized
Reason: Extensive deterioration

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: E1301, C1303, E1305, 01311, C1317, D1128, C1319
Landholding Agency: Army
Property Number: 21199920156
Status: Unutilized
Reason: Extensive deterioration

8 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 1322, 3016, 3070, 1323, 9663, C1341, C1342, C1343
Landholding Agency: Army
Property Number: 21199920157
Status: Unutilized
Reason: Extensive deterioration

Bldg. A1401
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920158
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: A1411, A1413, A1415, A14420, 1444
Landholding Agency: Army
Property Number: 21199920159
Status: Unutilized
Reason: Extensive deterioration

15 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 1448, A1451, A01452, A1454, B0114, B0116, B0118, B0214, B0216, B0218, C0119, D0211, 1456, A1460, A1491
Landholding Agency: Army
Property Number: 21199920160
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 01519, 2046, 2061
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920161
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 02085, 2270, 6229, 2410, 2411, 2621, 2885, 6230, 9642, 2886, 2887, 2888, 2889
Landholding Agency: Army
Property Number: 21199920162
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 3015, 3067, 3030, 03062, 1446, 03083, 03084, 03088, 3089
Landholding Agency: Army
Property Number: 21199920163
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 3092, 3101, 03094, 03097
Landholding Agency: Army
Property Number: 21199920164
Status: Unutilized
Reason: Extensive deterioration

8 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 03109, 03217, 04295, 3210, 3240, 03276, 03658, 3725
Landholding Agency: Army
Property Number: 21199920165
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 4059, 4066–4069
Landholding Agency: Army
Property Number: 21199920166
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 4079, 4081, 4170
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920167
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 5038, 5114, 5115, 5121, 5127, 5165
Landholding Agency: Army
Property Number: 21199920168
Status: Unutilized
Reason: Extensive deterioration

17 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 5173, 5210–5212, 6174, 6184–6186, 6205–6207, 6222–6227
Landholding Agency: Army
Property Number: 21199920169
Status: Unutilized

Reason: Extensive deterioration
5 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 5213, 6195, 6232, 6069, 2621
Landholding Agency: Army
Property Number: 21199920170
Status: Unutilized
Reason: Extensive deterioration
17 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 6168, 6228, 6175, 6183, 6221, 6176, 6181, 6212, 6217, 6177–6180, 6213–6216
Landholding Agency: Army
Property Number: 21199920171
Status: Unutilized
Reason: Extensive deterioration
11 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 6182, 6192, 6193, 6231, 6204, 6232, 6236, 6237, 7990, 06243, 06244
Landholding Agency: Army
Property Number: 21199920172
Status: Unutilized
Reason: Extensive deterioration
4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 7908, 07984, 7985, 08071
Landholding Agency: Army
Property Number: 21199920173
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 8095, 8096
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920174
Status: Unutilized
Reason: Extensive deterioration
19 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 8296, 8957–8965, 8967–8969, 8966, 8970–8972, 8978, 08980
Landholding Agency: Army
Property Number: 21199920175
Status: Unutilized
Reason: Extensive deterioration
7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 9502, 9504, 9506, 9507B, 9568, 9507, 9523
Landholding Agency: Army
Property Number: 21199920176
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 9572, 9591, 9595
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920177
Status: Unutilized
Reason: Extensive deterioration
8 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 9597, 9598, 09616, 09618, 9620, 9621, 9622, 9626
Landholding Agency: Army
Property Number: 21199920178
Status: Unutilized
Reason: Extensive deterioration
7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 9628, 9632, 9641, 09647, 09648, 9667, 9671
Landholding Agency: Army
Property Number: 21199920179
Status: Unutilized
Reason: Extensive deterioration
12 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: 9675, 1202, 9716, A1108, 9677, 9683, 9678, 9680, 9681, 9685, 9783, 09789
Landholding Agency: Army
Property Number: 21199920180
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 9988, 9991
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920181
Status: Unutilized
Reason: Extensive deterioration

[FR Doc. 99–12520 Filed 5–20–99; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by June 21, 1999.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: David Dell, Telephone: 404/679–7313; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION: Applicant: Dr. Susan Loeb, U.S.D.A. Forest Service, Southern Research Center, Clemson, South Carolina, TE011953–0.

The applicant requests authorization to take (capture, tag, and release) the endangered Carolina northern flying squirrel, *Glaucomys sabrinus coloratus,* and the Virginia northern flying squirrel, *Glaucomys sabrinus fuscus,* throughout the species' ranges in North Carolina for the purpose of enhancement of survival of the species.

Dated: May 13, 1999.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 99–12837 Filed 5–20–99; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Comprehensive Management Plan for the Tijuana Slough National Wildlife Refuge and Associated Environmental Assessment and Comprehensive Management Plan for the Tijuana River National Estuarine Research Reserve

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises agencies and the public that the Comprehensive Management Plan for the Tijuana Slough National Wildlife Refuge (Refuge) and associated Environmental Assessment are available from the U.S. Fish and Wildlife Service for public review and comment. The purpose of the Comprehensive Management Plan is to guide Refuge management decisions and to identify strategies to meet the goals and objectives of the Tijuana Slough Refuge and National Wildlife Refuge System. The Comprehensive Management Plan addresses the following management issues, functions, and programs: administrative framework; resource protection, management, and restoration; research and monitoring; education and interpretation; public involvement, use, and access; facilities development; appropriate and compatible Refuge uses determination; and watershed coordination between the United States and Mexico for the Tijuana Slough Refuge.

The Environmental Assessment evaluates the alternatives and analyzes the environmental effects of implementing the Comprehensive Management Plan. The two alternatives evaluated in the Environmental

Assessment provide different levels of wildlife management and visitor services opportunities. The Environmental Assessment will be used to determine whether the implementation of the selected alternative would have a significant impact upon the quality of the human environment.

The Comprehensive Management Plan for the Tijuana Slough National Wildlife Refuge was integrated into and coordinated with the update of the 1986 Management Plan for the Tijuana River National Estuarine Research Reserve (NERR). The National Oceanic and Atmospheric Administration (NOAA) administers the National Estuarine Research Reserve System. NOAA requires that each NERR have an approved written management plan that is periodically updated. The Comprehensive Management Plan is the first update of the 1986 Tijuana River NERR Management Plan.

DATES: Written comments should be postmarked or electronically-mailed no later than June 21, 1999.

ADDRESSES: There are three options for submitting comments on the Tijuana Slough EA and CMP, mail, fax, or electronic mail. Mail or fax your comments to Dean Rundle, Manager, San Diego Bay National Wildlife Refuge Complex, 2736 Loker Avenue West, Suite A, Carlsbad, CA 92008, phone (760) 930–0168, facsimile (760) 930–0256. You may submit comments by electronic mail (e-mail) to: r1planning—guest@fws.gov. Submit comments as an ASCII file avoiding the use of special characters and any form of encryption, and enter ''Tijuana Slough NWR CMP/EA'' in the subject line.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals who want copies of the Comprehensive Management Plan for the Tijuana Slough National Wildlife Refuge and Associated Environmental Assessment, should immediately contact Charles Houghten, Acting Chief, Division of Refuge Planning, 911 NE 11th Avenue, Portland, Oregon 97232, telephone (503) 231–2231, facsimile (503) 231–6161. These documents will also be available for viewing on the following Fish and Wildlife Service webpage www.r1.fws.gov/plnhome.html.

Background Information

The Tijuana Slough Refuge provides habitat for several endangered, threatened, and migratory species. The salt marsh, tidal channels, mudflats, sand beaches, and dunes provide habitat for the endangered light-footed clapper rail, endangered California least tern, endangered brown pelican, endangered salt marsh bird's beak, threatened western snowy plover, State-endangered Belding's savannah sparrow, and many species of migratory shorebirds and waterfowl. The riparian woodlands provide habitat for the endangered least Bell's vireo, endangered southwestern willow flycatcher, and many species of migratory birds.

Two alternatives are analyzed in the Environmental Assessment. Alternative A (preferred alternative) would implement increased levels of both wildlife management and visitor services at the Tijuana Slough Refuge. Alternative B (no action) would implement existing levels of wildlife management and visitor services at the Tijuana Slough Refuge. The Environmental Assessment also analyzes the environmental effects of (1) predator management for the recovery of endangered and threatened species, (2) construction of new office and classroom space, (3) acquisition of additional lands along Sea Coast Drive, (4) annual sand dune maintenance, (5) relocation of damaged trails in the Tijuana River floodplain, and (6) emergency dredging of the mouths of Oneonta Slough and Tijuana River.

The environmental review of the Refuge Comprehensive Management Plan and associated Environmental Assessment will be conducted in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA regulations (40 CFR 1500–1508), National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Dated: May 17, 1999.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 99–12838 Filed 5–20–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–963–1410–00–P]

Notice for Publication; AA–6652–G; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Far West, Inc. for approximately 5,839 acres. The lands involved are in the vicinity of Chignik, Alaska.

Seward Meridian, Alaska

T. 46 S., R. 58 W.,
Secs. 14, 15, and 16;
Secs. 20 to 23, inclusive;
Secs. 27, 28, 29, 32, 33, and 34.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until June 21, 1999 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Katherine L. Flippen,

Land Law Examiner, Branch of State and Project Adjudication.

[FR Doc. 99–12839 Filed 5–20–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–240–1050–00–24 1A]

Collection, Storage, Preservation and Scientific Study of Fossils From Federal and Indian Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a public meeting regarding the collection, storage, preservation and scientific study of fossils from federal and Indian lands will be held on June 21, 1999, in Reston, Virginia at the U.S. Geological Survey auditorium. The Department of the Interior will hold a one day public

meeting to receive input on federal paleontology policies.

DATES: The meeting will be held on Monday, June 21, 1999, beginning at 8:30 A.M. Persons wishing to make a presentation have up to five minutes to make a statement and will be accommodated on a first-come, first-served basis.

ADDRESSES: The U.S. Geological Survey is located at 12201 Sunrise Valley Drive, Reston, Virginia, and parking is generally available at the USGS visitor lot. Written comments will be accepted at the meeting or may be sent to Sara Pena, Bureau of Land Management, 1849 C. St., N.W., LS–204, Washington, D.C., 20240, by July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Sara Pena, Bureau of Land Management at (202) 452–5040.

SUPPLEMENTARY INFORMATION: The United States Senate (Senate Report 105–227) requested that the Secretary of the Interior, in consultation with appropriate scientific, educational, and commercial entities, prepare a report assessing the need for a unified federal policy on the collection, storage, and preservation of fossils. The background document, ''Collection, Storage, Preservation and Scientific Study of Fossils from Federal and Indian Lands,'' provides some information on current federal policies on paleontology. A copy of the background document is available on the Interior Department web site at *http://www.doi.gov*, or by contacting Sara Pena, Bureau of Land Management, 1849 C. St., N.W., LS–204, Washington, D.C., 20240, telephone: (202) 452–5040.

Dated: May 17, 1999.

Marilyn W. Nickels,

Group Manager, Cultural Heritage, Wilderness, Special Areas and Paleontology, Bureau of Land Management.

[FR Doc. 99–12795 Filed 5–20–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–09–1220–00: GP9–0183]

Notice of Meeting of the Oregon Trail Interpretive Center Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Thursday, June 3, 1999 from 8:00 a.m. to 4:00 p.m. at the Best Western Sunridge Inn, One Sunridge Lane, Baker City, Oregon 97814.

At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 12:00 p.m. to 12:15 p.m., June 3, 1999. Topics to be discussed are the prioritizing of market segments, refinement of mission and goals, and reports from Coordinators of Subcommittees.

DATES: The meeting will be from 8:00 a.m. to 4:00 p.m. June 3, 1999.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, P.O. Box 987, Baker City, OR 97814 (Telephone 541–523–1845).

Penelope Dunn-Woods,

Acting District Manager.

[FR Doc. 99–12810 Filed 5–20–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–036–1210–00]

Notice of Recreation Use Restrictions and Regulations for Egin Lakes Access and Red Road Recreation Sites Adjacent and Within the Sand Mountain Wilderness Study Area (WSA), Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of recreation use restrictions for Egin Lakes Access and Red Road recreation sites adjacent and within the Sand Mountain WSA, Idaho.

SUMMARY: Notice is hereby given in accordance with Title 43 Group 8000-Recreation Programs, and in accordance with the principles established by the Federal Land Policy and Management Act of 1976 and the National Environmental Policy Act of 1969, that certain lands located in and adjacent to the Sand Mountain WSA which includes the area known as the St. Anthony Sand Dunes Special Recreation Management Area (SRMA) in Fremont and Jefferson Counties, Idaho have recreation use restrictions placed upon them. Actions are implemented under the authority of 43 CFR 8364.

DATES: Effective date: May 26, 1999.

ADDRESSES: Bureau of Land Management, Upper Snake River District, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, telephone (208) 524–7500.

SUPPLEMENTARY INFORMATION: The WSA is 21,000 acres of public land that has current vehicle and recreation use restrictions within it that were established through the **Federal Register** on August 13, 1992. Both the WSA and SRMA are within the Egin-Hamer Winter Seasonal Closure Area established through the Federal Register on December 16, 1997.

Recreation use in the SRMA has increased nearly 1000% from an estimated 14,000 visits in FY84 to over 136,000 visits in FY 98. The Egin Lakes Access Site alone recorded over 72,000 visits in which over 20,000 visitors were campers using the undeveloped camping area or the developed parking lot to camp. Use along the Red Road where there are numerous undeveloped recreation sites recorded over 24,000 visits in which over 2000 visitors were overnight campers.

Open campfire sites inside the Sand Mountain WSA but outside the Red Road Open Sand Campfire Area have increased tremendously in the last few years, especially around major access routes onto the open sand and around Dry Lake Bed (Hidden Lake) causing degradation of the natural values of the area. The last few years have also had non-traditional dispersed recreation uses occur on Hidden Lake which is a dry lake bed in the winter but has water throughout the spring, summer, and fall seasons. Snowmobile and Personal Water Craft users have been using the lake in the summer for water craft skimming. This activity has created safety problems to other recreation users along the lake shore and in the water. These uses were not present at the time the roadless inventory for wilderness values was conducted by the BLM during 1970s and are not considered a type of primitive and unconfined recreation use for a wilderness characteristic.

To reduce the litter and debris left in open campfires causing safety problems to recreation users, the degrading of natural values of the area and prohibiting non-primitive type of recreation activities inside the WSA, the following restrictions will be implemented and apply to the Sand Mountain WSA: 1) Open campfires are prohibited inside the Sand Mountain WSA except in the designated Red Road Open Sand Campfire Area; 2) Use of personal water craft or any other motorized vehicle or craft is prohibited on any body of water inside the WSA.

Use in the developed and undeveloped recreation sites and areas surrounding and within the WSA have increased over 20% the last three years. The use has created public safety and

natural environment concerns within these sites and areas.

To reduce these public safety and natural environment concerns in these sites and areas, the following restrictions are to be implemented: (1) Quiet hours within the Egin Lakes Access Site and Red Road Recreation Area is from 11pm until 7am; (2) The burning of any foreign material other than wood in all camp fires is prohibited throughout the St. Anthony Sand Dunes SRMA. Prohibited material includes but not limited to pallets, treated lumber, tires, glass, aluminum, etc.; (3) Engaging in fighting; (4) Addressing any offensive, derisive, or annoying communication that has a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed.

Maps of the areas where the restrictions and regulations apply will be available at the Idaho Falls Field Office. Signs with the rules and regulations will be posted at all entrances into the WSA as well as at the recreation sites and areas. The new rules and regulations will incorporated into the existing St. Anthony Sand Dunes and Sand Mountain WSA information flyer.

FOR FURTHER INFORMATION CONTACT: Bill Boggs, Bureau of Land Management, Upper Snake River District, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 524–7527.

Dated: May 13, 1999.

Joe Kraayenbrink,

Field Manager.

[FR Doc. 99–12809 Filed 5–20–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: To comply with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), we are notifying you that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before June 21, 1999.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0073), 725 17th Street, N.W., Washington, D.C. 20503; telephone (202) 395–7340. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the e:Mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3385, e:Mail Dennis.C.Jones@mms.gov. You may also contact Dennis Jones to obtain a copy of the ICR at no cost.

SUPPLEMENTARY INFORMATION:

Title: Net Profit Share Leases.

OMB Control Number: 1010–0073.

Abstract: The Department of the Interior is responsible for matters relevant to mineral resource development in the OCS. The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. The Minerals Management Service (MMS) performs the royalty management functions for the Secretary.

To encourage exploration and development of oil and gas leases on submerged lands of the Outer Continental Shelf (OCS), regulations were promulgated at 30 CFR 260.110(4) implementing a net profit share bidding system. The Net Profit Share Lease (NPSL) bidding system was established to properly balance a fair market return to the Federal Government for the lease of its lands, with a fair profit to companies risking their investment capital. The system provides an incentive for early and expeditious exploration and development, and provides for a sharing of the risks by the lessee and the Government. The bidding system incorporates a fixed capital recovery system as the means through which the lessee recovers costs of exploration and development from production revenues, along with a reasonable return on investment. This collection of information is necessary in order to determine when royalty payments are due, and to determine the proper amount of payment.

Under the NPSL bidding system, a notice of OCS lease sale is published in the **Federal Register** with a net profit share rate and a capital recovery factor (CRF) established for each tract within the sale. The CRF allows the lessee to inflate certain allowable costs by multiplying costs by the CRF. This additional allowance results in a type of risk-sharing arrangement with the Government. Tracts within the same sale may have different profit share rates and different CRF's. The last OCS lease sale involving NPSL's was in August 1983.

When companies enter into NPSL agreements, they agree to submit the reports required by 30 CFR 220.031. There are no reporting forms required, but the lessees must submit updates containing specific information. Before production begins, reports are required on an annual basis. These reports must document costs incurred, credits received, and the balance in the NPSL capital account. Once production begins, monthly reports are required that include the amount and disposition of oil and gas saved, removed, or sold; the amount of production revenue; the amount and description of costs and credits to the NPSL capital account; the balance in the capital account; the net profit share base and net profit share payment due the Government; and the lessee's monthly profit share. All information submitted is taken directly from the lessee's own records. No unique information is required by MMS.

Royalty payments are made based on the individual lease's net profit share rate, multiplied by the quantity (revenues and other credits, less costs). MMS uses the data submitted in the annual and monthly reports to verify costs claimed, revenues earned, and royalty payments due. No royalties are paid until the lessee recovers exploration and development expenses. Information provided in the reports is used by MMS auditors. Failure of the respondent to submit the information results in noncompliance with the requirements of 30 CFR Part 220 and could result in loss of royalty payments to the Government.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection

of information was published on December 11, 1998 (63 FR 68472).

Estimated Number and Type of Respondents/Affected Entities: Approximately 11 Federal and Indian lessees and payors.

Frequency of Response: Monthly responses are required for 15 leases, and annual responses are required for 3 leases.

Burden Statement and Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the respondent burden to average 16 hours per response for a total of 2,928 hours. We estimate 1 hour of recordkeeping for each of the 18 OCS leases with NPSL agreements for a total of 18 hours. Therefore, the total annual burden hour estimate for this collection is 2,946 hours.

Estimated Annual Reporting and Recordkeeping ''Cost'' Burden: We have identified no paperwork cost burdens for this collection.

Comments: Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by June 21, 1999.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: April 22, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–12832 Filed 5–20–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intentions of the Bureau of Reclamation to seek extension of the information collection for the Lower Colorado River Well Inventory. The current OMB approval expires on December 31, 1999.

DATES: Comments on this notice must be received by July 20, 1999.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the information collection form and to submit comments on this information collection contact: Mr. Jeffrey Addiego, Boulder Canyon Operations Office, PO Box 61470, Boulder City, NV 89006–1470; telephone (702) 293–8525; or e-mail at JAddiego@lc.usbr.gov.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical utility; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Title: Lower Colorado River Well Inventory.

OMB No.: Reinstatement of OMB No. 1006–0014.

Description of respondents: All diversions of mainstream Colorado River water along the lower Colorado River must be accounted for and, for non-Indian diverters, in accordance with a water use contract with the Secretary of the Interior. Each diverter (including well pumpers) must be identified and their diversion locations and water use determined. This requires an inventory of wells along the lower Colorado River and the gathering of specific information concerning each well.

Frequency: These data will be collected only once for each well owner or operator as long as changes in water use, or other changes that would impact contractual or administrative requirements, are not made.

Estimated completion time: An average of 30 minutes is required for Reclamation to interview individual well owners or operators. Reclamation will use the information collected during these interviews to complete the information collection form.

Annual responses: 1,000.

Annual burden hours: 500 hours.

Dated: April 13, 1999.

William E. Rinne,

Area Manager, Boulder Canyon Operations Office.

[FR Doc. 99–12129 Filed 5–20–99; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–326 (Review); Frozen Concentrated Orange Juice from Brazil

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on frozen concentrated orange juice from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on December 2, 1998 (63 FR 66572) and determined on March 5, 1999 that it would conduct an expedited review (64 FR 12351, March 12, 1999). The Commission transmitted its determination in this review to the Secretary of Commerce on May 17, 1999. The views of the Commission are contained in USITC Publication 3195 (May 1999), entitled *Frozen Concentrated Orange Juice from Brazil: Investigation No. 731–TA–326 (Review).*

Issued: May 17, 1999.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Bragg not participating. Commissioners Crawford and Askey dissenting.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–12856 Filed 5–20–99; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–282 (Review)]

Petroleum Wax Candles From China

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject review.

EFFECTIVE DATE: May 14, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On April 8, 1999, the Commission established a schedule for the conduct of the expedited five-year review of the subject antidumping duty order (64 FR 19197, Apr. 19, 1999). Subsequently, the Department of Commerce extended the date for its final results in the expedited review from May 4, 1999, to August 2, 1999 (64 FR 24573, May 7, 1999). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: the staff report will be placed in the nonpublic record on August 4, 1999; the deadline for interested party comments (which may not contain new factual information) is August 9, 1999; and the deadline for brief written statements (which shall not contain new factual information) pertinent to the review by any person that is neither a party to the five-year review not an interested party is August 9, 1999.

For further information concerning this review see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: May 18, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–12858 Filed 5–20–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–115 (Review)]

Synthetic Methionine From Japan; Notice of Commission Determination To Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing.

SUMMARY: Upon request of Japanese producer Sumitomo Chemical Co., Limited (''Sumitomo''), the Commission has determined to conduct a portion of its hearing in the above-captioned investigations scheduled for May 18, 1999, in camera. See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 C.F.R. 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 C.F.R. 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–3105, e-mail acasson@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Sumitomo has justified the need for a closed session. Sumitomo seeks a closed session to allow for a discussion of it business operations and those of the domestic industry. In this investigation, the aggregate data of the domestic industry is business proprietary information (BPI). Because Sumitomo's discussion of its own operations and of the domestic industry's data will necessitate disclosure of business proprietary information (BPI), it can only occur if a portion of the hearing is held in camera. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will begin with a public presentation by the parties opposing revocation of the antidumping duty order (the domestic producers) and the party supporting revocation (Sumitomo), with questions from the Commission. In addition, the hearing will include a 15-minute in camera session for a confidential presentation by the Sumitomo and for questions from the Commission relating to the BPI, followed by a 15-minute in camera rebuttal presentation by the domestic producers. For any in camera session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. See 19 C.F.R. 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the in camera session will be taken from their respective overall allotments for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 C.F.R. 201.39) that, in her opinion, a portion of the Commission's hearing in Synthetic Methionine from Japan, Inv. No. AA1921–115 (Review), may be closed to the public to prevent the disclosure of BPI.

Issued: May 17, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–12857 Filed 5–20–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; Application for Suspension of Deportation and Special Rule Cancellation of Removal.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The

INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefor, OMB approval has been requested by May 21, 1999. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Shapiro at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until July 20, 1999. During 60-day regular review, ALL comments and suggestions, suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Revision of currently approved collection.*

(2) *Title of the Form/Collection:* Application for Suspension of Deportation and Special Rule Cancellation of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–881. International Affairs, Office of Asylum, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by nonimmigrants to apply for suspension of deportation or Special Rule cancellation of removal. The information collected on this form is necessary in order for the INS to determine if it has jurisdiction over an individual applying for this release as well as to elicit information regarding the eligibility of an individual applying for this release, pursuant to section 203 of Public Law 105–100.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,200,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 17, 1999.

Stephen Tarragon,

Acting Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–12841 Filed 5–20–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(BJA)–1220]

RIN 1121–ZB53

Motor Vehicle Theft Prevention Act Program

AGENCY: Bureau of Justice Assistance, Office of Justice Programs, Justice.

ACTION: Fiscal Year 1999 Request for Proposals (RFP).

SUMMARY: The Bureau of Justice Assistance (BJA) is soliciting grant applications from State governments interested in participating in the national voluntary motor vehicle theft prevention program, Watch Your Car, as authorized under the Motor Vehicle Theft Prevention Act of 1994 (MVTPA).

DATES: All applications must be returned with a postmark, or dated receipt by a private carrier, no later than June 15, 1999.

ADDRESSES: All proposals must be mailed or sent to: Bureau of Justice Assistance; Attention: Watch Your Car Program Office; Bureau of Justice Assistance; 810 Seventh Street NW, Room 4411, Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: The Bureau of Justice Assistance has already mailed program guides and application kits to each eligible State. The State's automobile theft prevention authority, where one exists, is designated as the recipient. For those States without an authority, the agency that administers the Byrne Formula Grant Program will be the recipient. However, any State agency involved in preventing motor vehicle theft may apply. Only one initial award will be made per State. However, those States that received initial awards during fiscal years 1996 and 1997 and eligible to apply for supplements. Copies of a fact sheet describing the Program are available by calling the U.S. Department of Justice Response Center at 1–800–421–6770. The metropolitan Washington, D.C., area number is 202–307–1480. Interested parties may download and print a copy of this announcement by accessing BJA's National Auto Theft Prevention Program Web page at ''http://www.ojp.usdoj.gov/BJA/html/wyc.htm''. Adobe Acrobat software, an on-line fact sheet on the Watch Your Car Program, samples of the decals, the recipient of the program guide and application kit for each State, and other graphical images and statistics pertaining to auto theft are also available at this site.

SUPPLEMENTARY INFORMATION:

Authority

Section 220001 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322, 108 Stat. 2074, codified at 42 U.S.C. 14171, contains the Motor Vehicle Theft Prevention Act (MVTPA). The MVTPA requires the Attorney General to establish a national voluntary motor vehicle theft prevention program. A proposed rule was published in the **Federal Register** on October 24, 1995. The final rule was published on August 6, 1996, and awards were made to the States of Arizona and New Mexico in September, 1996. An FY 1997 RFP was published in the **Federal Register** on April 14, 1997, and on September 30, 1997, grant awards were made to the States of Florida, Maryland, North Carolina, New Jersey, New York, and Tennessee. The FY 1998 RFP appeared in the February 13, 1998 **Federal Register**, and awards were subsequently made in August, 1998 to Alabama, Connecticut, Massachusetts, Minnesota, South Carolina, and the United States Virgin Islands. The purpose of this announcement is to notify States that have not received no funding, or received funding during Fiscal Years 1996 and 1997 of the availability of grant funds appropriated under the authority of Public Law 105–277, the Omnibus Appropriations Act for Fiscal Year 1999.

Grant Offering

BJA will be offering implementation grants for States that have no statewide motor vehicle theft prevention decal program in place and for States with existing programs that wish to make the transition to the Watch Your Car Program. Implementation grants will be awarded up to $200,000.

For the past three years, the maximum award amount was $150,000. For those States that received awards during fiscal years 1996 and 1997, BJA will consider applications for supplemental awards, on a case-by-case basis, in order for those States to attain parity with the increased base level.

BJA encourages innovative approaches to implementing comprehensive, unique anti-car-theft initiatives and will evaluate applications based on the size and scope of the proposed project and its compatibility with other theft prevention measures. Other factors for consideration include the amount of public and private resources leveraged in the proposal.

Background

The purpose of the Watch Your Car Program is to focus the attention of law enforcement on vehicles that are not routinely operated during the early morning hours or are operated near international land borders or ports. The program enables proactive investigation of potential auto theft before a stolen vehicle report is filed.

Under this program, a motor vehicle owner must sign a consent form and obtain decals authorizing law enforcement officers to stop the motor vehicle if it is being driven under certain specified conditions and to take reasonable steps to determine whether the vehicle is being operated with the owner's consent. There are two conditions. Under the first condition, the owner may consent to have the car stopped if it is operated between the hours of 1 a.m. and 5 a.m. Under the second condition, the owner may consent to have the car stopped if it crosses or is about to cross a United States land border or if it enters a port.

States elect to participate in the program solely at their option.

BJA is aware of similar types of theft prevention programs already in existence. The most common program is Combat Auto Theft (CAT), which is used on a statewide basis and by individual local jurisdictions in California, Louisiana, Minnesota, and Pennsylvania. Illinois has the Beat Auto Theft (BAT) Program, and Texas originated the Help End Auto Theft (HEAT) Program.

Programs such as CAT, BAT, and HEAT function on a statewide basis to insure a level of uniformity among participating municipalities and counties. These programs have worked successfully in their States of origin because police throughout the State could easily recognize their own decal. If a thief drove a stolen vehicle across state lines however, the police in the adjoining jurisdiction may not have recognized the decal or if they did recognize it, may lack the authorization to stop the vehicle and check the identity of the driver. The dissimilarity of statewide programs has been further complicated by the proliferation of local anti-theft programs in States without a statewide program. Numerous municipalities and counties have adopted a variety of programs using differing emblems, icons, and symbols.

The main advantage of the national Watch Your Car Program is its use of a decal that will eventually become an recognizable icon by police nationwide. It features the capability of intra/interstate enforcement through the checking of vehicles with differing county and/or out-of-State license plates.

BJA's specifications call for the manufacture of tamper-resistant decals made from retro reflective sheeting to make them easily discernible at night. The windshield decal(s) are to be applied on the outside of the glass directly above the inside rear-view mirror. The rear window decal is affixed on the exterior face along the lower left side.

The MVTPA Program compels a thief to remove tamper-resistant decals while alongside the vehicle, acting suspiciously and drawing attention to himself/herself. These impediments, in addition to other theft prevention devices such as steering wheel locks, increase the number of hurdles a thief must overcome and raise the level of theft deterrence.

The MVTPA requires, as a condition of participation, that each State agree to take reasonable steps to ensure that law enforcement officials throughout its jurisdiction are familiar with the program and with the conditions under which motor vehicles may be stopped.

This program is a Federal program that operates separately from any existing State or local motor vehicle theft prevention program. It is not intended to preempt existing State or local laws or programs.

Application Requirements

Problem Statement

States wishing to apply shall provide an assessment of the auto theft problem in their State and what efforts have been undertaken to address it. Applicants should contrast the severity of their auto theft problem with those in other States and discern the patterns and trends of auto theft. States should also identify what steps have been taken to decrease auto theft. For instance, does the State have an automobile theft prevention authority and what types of initiatives it supports to combat auto theft?

Goals and Objectives

The applicant must provide goals, objectives, and methods of implementation for the project that are consistent with the program announcement. Objectives should be clear, measurable, attainable, and focused on the methods used to conduct the project. Favorable consideration will be given to those applicants that merge their auto theft enforcement efforts and their prevention initiatives into a coherent strategy and establish goals and objectives based on the anticipated collective outcome of both approaches.

Project Strategy or Design

The project strategy or design should describe the Watch Your Car Program

the State wishes to implement including its size and scope; outreach efforts to educate the public; statewide training programs to inform municipal, county, and State law enforcement officers of the program; a description of the database if the State wishes to maintain a centralized computer registry; the production and dissemination of universal consent forms authorizing traffic stops by any local, State, or Federal law enforcement officer pursuant to the stipulated program condition(s); and efforts to be undertaken to enlist both public and private organizations such as auto dealers, auto insurance companies, and other major retail businesses willing to host registration programs and encourage employee participation.

Implementation Plan

The applicant should provide an implementation plan for the program outlined above. It should include a schedule with milestones for significant tasks in a chart form.

Additional Resource Commitments

The applicant is encouraged to leverage other resources—State, local, or private—in support of this project.

Project Management Structure

The applicant should describe how the project will be structured, organized, and managed. It should identify and describe the qualifications and experience of the project director and project staff, the basis for their selection, and their roles and responsibilities.

Organizational Capability

The applicant should describe the organizational experience, both programmatic and financial, that qualifies it to manage the project.

Program Evaluation

The program evaluation should indicate how the applicant will assess the success of project implementation and the extent to which the strategy achieved the project's goals and objectives.

Nancy E. Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 99–12821 Filed 5–20–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April and May, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–35,541; Boston Precision Parts Co., Hyde Park, MA
TA–W–35,755; Smith Meter, Inc., An FMC Corp. Subsidiary, Erie, PA
TA–W–35,811; Reliance Electric, A Div. of Rockwell Automation, Madison, IN
TA–W–35,821; PMC Global Industries, Inc., Odessa, TX
TA–W–35,641; Green Garden, Somerset, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–35,709; Handy Button Machine Co, New York, NY
TA–W–36,042; Broughton Operating Corp., Houston, TX
TA–W–35,997; Beau Monde, New York, NY
TA–W–35,809; Globe Construction Co., Inc., Hobbs, NM
TA–W–36,023; Holson Burnes, Div. of Newell Co., North Smithfield, RI
TA–W–35,760; Stu Blattner, Inc., Golden, CO
TA–W–35,741; Partners in Exploration LLC, Richardson, TX
TA–W–36,021; RH Component Technologies, Rolls Royce Howmet Components Technologies (RHCT), Claremore, OK
TA–W–36,082; Quality Oil Service, Jal, NM
TA–W–35,808; Paul Sebastian, Inc., Ocean, NJ
TA–W–35,877; Production Testing Services, Alaska Div., Anchorage, AK
TA–W–35,875; Wilson Supply, Houston, TX
TA–W–35,767; U.S. Energy Corp., Jackpot Mine, Riverton, WY
TA–W–35,678; Terratherm Environmental Services, Inc., Houston, TX
TA–W–35,685; The Worcester Co., New York, NY
TA–W–35,816; Chapman Services, Inc., Odessa, TX
TA–W–35,730; Medco Trucking, Questa, NM

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–35,888; North Power, Arcade, NY
TA–W–35,675; Connor Corp., Indianapolis, IN
TA–W–35,432; Illinois Glove Co., Effingham, IL
TA–W–35,930; Mueller Industries, Inc., Wynne, AR
TA–W–35,776; Illinois Glove Co., Beardstown, IL
TA–W–35,967; Siemens ICN, a/k/a Siemens Information Communications Networks, Inc., Cherry Hill, NJ
TA–W–35,490; Rock-Tenn Co., Taylorsville, NC
TA–W–35,797; Columbia Controls & Panels, Portland, OR
TA–W–35,771; United States Can Co., Ballonoff Unit, Columbiana, OH
TA–W–35,399; The Boeing Co., Seattle WA & Operating in the Following Locations A; Puget Sound Region, WA, B; Wichita, KS, C; Philadelphia, PA, D; Tulsa, OK, E; McAlester, OK and F; Oak Ridge, TN
TA–W–35,911; Morrow Snowboards, Inc., Salem, OR
TA–W–36,090; Cliffs Drilling Co., Houston, TX
TA–W–35,420; Active Products Corp., Marion, IN

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact for all workers of such determination.

TA–W–35,524; Lincoln Laser Co, Phoenix, AR: January 12, 1998.
TA–W–35,512; Tecos Fashions, El Paso, TX: January 5, 1998.
TA–W–35,689; AMP, Inc., Green Valley Road Plant, Seven Valleys, PA: February 1, 1998.
TA–W–35,693; Columbia Forest Products, New Freedom Div., New Freedom, PA: February 1, 1998.
TA–W–35,753; Molen Drilling Co., Inc., Billings, MT: February 15, 1998.
TA–W–35,511; Stanley Tools, Goldblatt Plant, Kansas City, KS: January 6, 1998.
TA–W–35,446; Amphenol Corp., Amphenol Aerospace Operations, Sidney, NY: February 8, 1999.
TA–W–35,460; Amerada Hess Corp., Houston, TX & Operating at Various Locations in The Following States: A; LA, B; ND, C; NM, D; TX: December 18, 1997.
TA–W–35,579 & A; Mitchell Energy & Development Crop. Headquartered in The Woodland, TX & Operating Through The State of TX and Mitchell Louisiana Gas Services L.P. & Operating Throughout The State of Louisiana: January 12, 1998.
TA–W–35,478; E.I. DuPont De Nemours & Co., Inc., Cedar Creek Site, Fayetteville, NC: December 28, 1997.
TA–W–35,897; The West Bend Co., West Bend, WI: February 26, 1998.
TA–W–35,943; Greif Bros. Corp., Baltimore, MD: March 15, 1998.
TA–W–35,661; Discovery Drilling Co., Inc., Hays, KS: January 1, 1998.
TA–W–35,707; Wool Fashions, Inc., Hoboken, NJ: February 8, 1998.
TA–W–35,614; Jasper Textiles, Inc., a/k/a Outer Banks, Jacksonville, NC: January 20, 1998.
TA–W–35,690; Kleinert's, Inc of Alabama, Elba, AL: February 1, 1998.
TA–W–35,829; Lucia, Inc., Elkin Plant, Elkin, NC: April 30, 1998.
TA–W–35,733 & A; Chinook Group, Inc., North Branch, MN and St. Paul, MN: January 24, 1998.
TA–W–35,345; International Paper Co., Printing Papers Div., Ticonderoga, NY: December 1, 1997.
TA–W–35,672; Allvac Latrobe Plant, An Allegheny Teledyne Co., Latrobe, PA: February 8, 1998.
TA–W–35,834; Gambro Renal Care Products, Newport News, VA: February 19, 1998.
TA–W–35,315; Hensley Woodworking, Strawberry Plains, TN: November 23, 1998.
TA–W–35,790 & A; KCS Mountain Resources, Inc., Warland, WY and Manderson, WY: February 12, 1998.
TA–W–35,784; Hycroft Resources & Development, Winnemucca, NV: February 12, 1998.
TA–W–35,830; Hayes Corp., Norcross, GA: February 19, 1998.
TA–W–35,854; Carolina Maid Products, Inc., Granite Quarry, NC: March 3, 1998.
TA–W–35,582; Stevens International, Inc., Hamilton, OH: March 26, 1999.
TA–W–35,777; John Deere Consumer Products, Greer, SC and Gastonia, NC: February 22, 1998.
TA–W–35,618; Kinzua Resources LLC, Heppner Mill, Heppner, OR: January 28, 1998.
TA–W–35,746; Boise Cascade Corp., Fisher Sawmill, Fisher, LA: February 8, 1998.
TA–W–35,557; Freeport-McMoRan Sulphur LLC, Calberson Mine, Pecos, TX Including Leased Workers of Pecos Valley Field Services, Inc., Pecos, TX: January 12, 1998.
TA–W–35,658; Motorola, Inc., Component Products Div., SAW Business Unit, Scottsdale, AZ: January 17, 1998.
TA–W–35,634; CJR Contractors, Inc., Denver City, TX: January 12, 1998.
TA–W–35,568; Nakano USA, Inc., St. Marys, OH: January 19, 1998.
TA–W–35,320; Lucky Star Industries, Patterson, NJ: November 24, 1997.
TA–W–35,363; Eden Apparel, Inc., Manchester, TN: December 1, 1997.
TA–W–35,611; Story & Clark Piano Co., Seneca, PA: January 21, 1998.
TA–W–36,007; Hamphire Designers, Inc., Winona Knitting Mills Div., LaCrescent, MN and Winona, MN: March 29, 1998.
TA–W–35,623 & A; Leasehold Management Corp., Oklahoma City, OK and Seminole, OK: January 24, 1998.
TA–W–35,674; Custom Engineering Co., Erie, PA: February 8, 1998;
TA–W–35,669; Patterson Energy, Inc., Snyder, TX and Workers of Patterson Drilling Co. A/k/a Robertson Onshore Drilling, Patterson Petroleum, Inc., Lone State Mud, Inc., Operating in the Following States A; TX, B; LA, C; NM, D; MS: February 3, 1998.
TA–W–35,889 & A; Ominex Energy, Inc., Mason, MI and Ludingto, MT: March 8, 1998.
TA–W–35,739; Southwest Royalties, Inc., Midland, TX: February 11, 1998.
TA–W–35,517; Kopfman & McGinnis, Inc (d/b/a H & W Oil Co), Hays, KS: January 1, 1998.
TA–W–35,826; Harris Mud & Chemical, Inc., Olney, IL: February 23, 1998.
TA–W–35,915 & A, B, C; VF Jeanswear, Richland, MO, Springfield, MO, Houston, MO and Lebanon, MO: February 16, 1998.
TA–W–35,525 & A, B; Ithaca Industries, Inc., Gastonia, NC, Cairo, GA and Vidalia, GA: January 11, 1998.
TA–W–35,600; Exolon-Esk Co., Tonawanda, NY: December 28, 1998.
TA–W–35,937; Lee Sportswear, Inc., Plantersville, MS: March 18, 1998.
TA–W–35,947; Flair-Fold Corp., Hiawatha, KS: March 8, 1998.
TA–W–35,932; Lenox Crystal, Inc., Mt. Pleasant, PA: May 24, 1999.
TA–W–35,945; Worldclass Processing, Inc., Ambridge, PA: March 10, 1998.
TA–W–35,700; Warnaco, Inc., Blanch Div., New York, NY: January 28, 1998.
TA–W–35,747; The John Rems Corp., McCungie, PA: February 3, 1998.
TA–W–35,804; Veritas DGC Land, US Transition Div., Pearl, MS: February 23, 1998.
TA–W–35,998; G.W.W., Inc., Elkhorn, WI: March 25, 1998.
TA–W–35,722; Rostra Precision Controls; Laurinburg, NC: February 11, 1998.
TA–W–35,831; LaBrava LTD, Brooklyn, NY: February 23, 1998.
TA–W–36,068, BTR Sealing Systems Ohio, West Unity, OH: March 30, 1998.
TA–W–35,645; Phoenix Industries, McAlester, OK: January 27, 1998.
TA–W–35,660 & A; C.B. Cummings & Sons Co., Norway, ME and Groveton, NH: January 8, 1998.
TA–W–35,734; Basin Tools & Service, Inc., Williston, ND: February 2, 1998.
TA–W–35,955; Mowad Apparel, Inc., El Paso, TX: March 15, 1998.
TA–W–35,765; Hennepin Paper Co., Little Falls, MN: February 17, 1998.
TA–W–35,666; Mayflower Manufacturing Co., Old Forge, PA: January 1, 1998.
TA–W–35,842; MKE Quantum Components (MKOC), Louisville, CO: February 25, 1998.
TA–W–36,033; American Casing, Inc., Williston, ND: March 17, 1998.
TA–W–35,985; Emerson Electric Co., Specialty Motor Div., Independence, KS: March 20, 1998.
TA–W–35,813; Fentress Industries, Jamestown, TN: February 16, 1998.
TA–W–36,040; Westport Oil and Gas Co., Inc., Denver, CO and Houston, TX: March 25, 1998.

TA–W–34,668; Pinson Mining Co., Winnemucca, NV: February 4, 1998.
TA–W–35,903; Independence Mining Co., Inc., Elko, NV: March 5, 1998.
TA–W–35,973; Edwards Systems Technology, Pittsfield, ME: March 26, 1998.
TA–W–36,002; Imperial Home, Decor Group, Plattsburgh, NY: April 29, 1999.
TA–W–35,516; ASARCO, Inc., EL Paso, TX: January 7, 1998.
TA–W–35,788; Harman International, McGregor Loudspeaker Manufacturing, Prairie du Chen, WI: February 17, 1998.
TA–W–35,858 &A; Ediburg Manufacturing Co a/k/a Waxahachie Garment Co., Edinburg, TX and Weslaco Operatings a/k/a Weslaco Cutting Center, Bowie Manufacturing, Haggar Clothing Co, Weslaco, TX: February 22, 1999.
TA–W–35,931; Power Resource, Inc., Casper, WY and Douglas, WY: March 11, 1998.
TA–W–35,752; Rhodia Rare Earths, Inc., Freeport, TX: February 1, 1998.
TA–W–35,979; Vishay Sprague, Concord, NH: March 17, 1998.
TA–W–35,607; The Machintosh of New England Co., New Bedford, MA: January 8, 1998.
TA–W–35,824; Therm-O-Disk, Inc., El Paso, TX: February 21, 1998.
TA–W–35,868; 3M West Deptford Plant, Electrical Prducs Div., Thorofare, NJ: February 22, 1998.
TA–W–35,735; McDowell Country Apparel, Bradshaw, WV: February 1, 1998.
TA–W–35,789; U.S. Colors, Inc., Scottsville, KY: February 12, 1998.
TA–W–35,001; The Wells Lamont Corp., McGehee, AR: March 19, 1998.
TA–W–35,725 & A; DLB Equities LLC, Oklahoma City, OK and Gulfport Energy Corp., Oklahoma City, OK: February 11, 1998.
TA–W–36,011; Westwood Products A Div. Of WWP, Inc., New Castle, IN: March 21, 1998.
TA–W–35,756; Ringo Drilling Co, Inc., Abilene, TX: February 17, 1998.
TA–W–35,794; Cone Mills Corp., Greensboro, NC and Carlisle, SC: August 1, 1998.
TA–W–35,856; Suzette Fashion, Jersey City, NJ and New York, NY: March 1, 1998.
TA–W–35,863; Tultex, Mayodan, NC: March 2, 1998.
TA–W–35,828; Brown Jordan Co., Newport, AR: February 22, 1998.
TA–W–35,822; Fashion Enterprises, El Paso, TX: February 22, 1998.
TA–W–35,562; Howard Korenstein Sportswear, Newark, NJ: January 1, 1998.
TA–W–35,519; Henry Glass & Co., Inc., New York NY: January 8, 1998.
TA–W–35,817; Rawlings Manufacturing, Football Dept., Ava, MO: February 17, 1998.
TA–W–35,987; Calgon Carbon Corp., Catlettsburg, KY: March 23, 1998.
TA–W–35,848; Pool Co., Roosevelt, UT: January 4, 1998.
TA–W–35,688; Tactyl Technologies, Inc. A Subsidiary of Safeskin Corp., Vista, CA: February 3, 1998.
TA–W–35,919; Dales Sportswear, Hartford, AL: March 18, 1998.
TA–W–36,032 & A, B; Hallwood Petroleum, Inc., Great Bend, KS, Plainville, KS and Big Lake, TX: March 17, 1998.
TA–W–35,949; Bonnell Mfg Co., Inc., Mt. Laurel, NJ: March 8, 1998.
TA–W–35,456; Hitachi Semiconductor (America, Inc., Manufacturing Div., Irving, TX: December 10, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April and May 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03002; Rainier West Sportswear, Centralia, WA
NAFTA–TAA–02834; ASARCO, Inc., El Paso, TX
NAFTA–TAA–02937; Reliance Electric, A Div. of Rockwell Automation, Madison, IN
NAFTA–TAA–02933; Arrow Automotive Industries, Morrilton, AR
NAFTA–TAA–02832; Rock-Tenn Co., Taylorsville, NC
NAFTA–TAA–03000; Phoenix Production Co., Cody, WY
NAFTA–TAA–02919; Martin Marietta Magnesia Specialties, Inc., Manistee, MI
NAFTA–TAA–2985; Continental Sprayers, Inc., El Paso, TX

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–03021; Smith Foods, Inc., Independence, KS

The investigation revealed that the works of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02920; Custom Engineering Co., Erie, PA: February 8, 1998.
NAFTA–TAA–03090; Chamberlain Moore-O-Matic, Waupaca, WI: March 29, 1998.
NAFTA–TAA–03146; Cooper Industries, Inc., Bussmann Div., Elizabethtown, KY: April 13, 1998.
NAFTA–TAA–03089; Aloecorp, Harlingen, TX: March 26, 1998.
NAFTA–TAA–03082; Breed Technologies, Inc., d/b/a Breed Tennessee Holdings, Maryville, TN: March 30, 1998.
NAFTA–TAA–03053; O-Cedar Brands, Inc., Lancaster Industries Div., South Lancaster, MA: March 29, 1998.
NAFTA–TAA–02925; Weyerhaeuser Co., Pulp and Paper Div., Longview Chlor-Alkali Plant. Longview, WA: February 15, 1998.
NAFTA–TAA–02934; Hennepin Paper Co., Little Falls, PA: February 17, 1998.
NAFTA–TAA–02921; Triple A Trouser Mfg. Co., Scranton, PA: February 5, 1998.

NAFTA–TAA–03026; Mowad Apparel, Inc., El Paso, TX: March 15, 1998.
NAFTA–TAA–03025; Standard Motor Products, Inc., Federal Parts Div., Dallas, TX: March 8, 1998.
NAFTA–TAA–03057; The Hirsch Co., Div. Of Steel Works, Inc., Skokie, IL: March 25, 1999.
NAFTA–TAA–02894; Phoenix Industries, McAlester, OK: January 27, 1998.
NAFTA–TAA–02947; Harman International, McGregor Loudspeaker Manufacturing, Prairie du Chen, WI: February 23, 1998.
NAFTA–TAA–03045; Edwards Systems Technology, Pittsfield, ME: March 26, 1998.
NAFTA–TAA–02923; Mayflower Manufacturing Co., Old Forge, PA: February 5, 1998.
NAFTA–TAA–02959; Edinburg Manufacturing Co., a/k/a Waxahachie Garment Co., Edinburg, TX and Weslaco Operations, a/k/a Weslaco Cutting Center, a/k/a Bowie Manufacturing, a/k/a Haggar Clothing Co., Weslaco, TX: February 22, 1999.
NAFTA–TAA–02969; General Electric Co., Morrison, IL: March 5, 1998.

I hereby certify that the aforementioned determinations were issued during the months of April and May, 1999. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 10, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–12911 Filed 5–21–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,968]

Firstmiss Steel, Inc. Hollsopple, Pennsylvania; Notice of Negative Determination on Reconsideration

On April 5, 1999, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner presented evidence that the Department's survey of customers of FirstMiss Steel, Inc. was incomplete. The notice was published in the **Federal Register** on April 27, 1999 (64 FR 22650).

The Department initially denied TAA to workers of FirstMiss Steel, Inc. producing steel products because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that the majority of the customers responding to a customer survey reported no increase in import purchases of steel ingot and bars during the relevant time period (1997 to 1998).

The petitioners requesting reconsideration also cited that stainless steel in 1998 is one of the products being dumped by foreign countries into the U.S. market place at levels significantly above 1997 levels. During the course of a TAA petition investigation to determine worker group eligibility, the Department does not conduct an industry study, but limits its investigation to the impact of articles like or directly competitive with the products produced and sold by the workers' firm.

On reconsideration, the Department conducted further survey of FirstMiss Steel's major declining customers. The majority of respondents reported no increase in reliance on import purchases of steel ingots, bars and billets while decreasing purchases from the subject firm.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of FirstMiss Steel, Inc., Hollsopple, Pennsylvania.

Signed at Washington, DC this 10th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–12908 Filed 5–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 322]

International Paper Corporation, Containerboard Division, Gardiner, Oregon; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of March 8, 1999, petitioners requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers of the subject firm.

The petitioners present evidence that the Department's customer survey analysis was incomplete.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 12th day of May 1999.

Grant D. Beale

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–12907 Filed 5–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,467]

Pittsburgh Corning Corporation, Port Allegany, PA Notice of Negative Determination Regarding Application for Reconsideration

By application dated April 5, 1999, the American Flint Glass Workers Union (AFGWU), AFL–CIO, requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Corning Pittsburgh Corporation located in Port Allegany, Pennsylvania, was signed on March 9, 1999, and published in the Federal Register on April 6, 1999 (64 FR 16752).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative determination issued by the Department on behalf of workers of the subject firm in Port Allegany, Pennsylvania, was based on the finding

that the ''contributed importantly'' test of the worker group eligibility requirements of Section 222 of the Trade Act of 1974 was not met for workers at Pittsburgh Corning Corporation, Port Allegany, Pennsylvania producing glass blocks. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department of Labor surveyed the major declining customers of the subject firm regarding their purchases of glass blocks. None of the respondents increased their import purchases of glass blocks while decreasing their purchases from the subject firm.

The AFGWU asserts that increased imports of articles directly competitive with articles produced by Pittsburgh Corning has contributed to worker separations at the Port Allegany plant. Further, the aggregate import of the products by competitive firms has greatly contributed to worker separations.

Glass blocks are not separately identifiable in official trade statistics classified in the U.S. International Trade Commission, Harmonized Tariff Schedules. Therefore, in order to determine if criterion (3) of worker group eligibility requirements was met, the Department relied on the survey of customers of the subject firm to determine if imports ''contributed importantly'' to worker separations.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 11th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–12909 Filed 5–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed revision of the ETA 2112 report: Financial Transaction Summary.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before July 20, 1999.

ADDRESSES: James E. Herbert, Unemployment Insurance Service, Employment and Training Administration, Department of Labor, Room C–4514, 200 Constitution Avenue, NW, Washington, DC 20210; 202–219–5653 x 380 (this is not a toll-free number); jherbert@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 2112 Report, OMB No. 1205–0154, collects, in summary form, totals of all financial transactions affecting the status of each State's account in the Unemployment Trust Fund (UTF) for the month reported. The transactions include receipts, disbursements, adjustments, and fund balances. The ETA uses report data to monitor UTF funds flows, to identify excessive drawdowns from the UTF, which may cause loss of interest to the UTF, and to record transaction information in the Unemployment Insurance Database and the UTF subsidiary to the Departmental General Ledger. The transaction information is used to compile the annual departmental consolidated financial statements. ETA also uses information on the ETA 2112 for research and actuarial projects: generating statistics on the UI program, projecting benefit financing requirements, and analyzing the solvency of the UTF. That information is used by States, other Federal Agencies, and research groups to manage and analyze UTF activities. Additionally, the ETA uses ETA 2112 information for reviewing proposed State and Federal UI laws, especially pertaining to benefit financing issues, and to monitor State activities conducted under Title IX of the Social Security Act (Reed Act).

It is necessary to revise the ETA 2112 format and instructions to accommodate the reporting of the following changes:

- States may now make reimbursements of Combined Wage Claims (CWC) through the Unemployment Trust Fund Accounting Systems (UTFAS), replacing the old system of issuing a check directly to the State billing for reimbursement.
- States may transfer to the Internal Revenue Service the amounts withheld for Federal income tax purposes from benefit payments directly through the UTFAS.
- In FY 1999 there was a distribution of Reed Act money under section 903 of the Social Security Act. This was the first distribution since FY 1958. The existing ETA 2112, developed long after that distribution, does not provide report cells for new distributions.

Because of these events, the ETA has decided to rewrite the ETA 2112 to include new cells in the report, and to revise reporting instructions accordingly.

II. Current Actions

This action is required to update the ETA 2112 to capture information on financial transactions not available in

the current configuration, specifically automated CWC reimbursements, the transfer of withholding amounts to the IRS, and new Reed Act distributions. The first two items are currently reported on the ETA 2112 in the general ''Comments'' section.

The revision to the ETA 2112 will provide a separate line for specific reporting.

The Reed Act revision will provide a separate line to report Reed Act activity beyond amounts amortized with Title III administrative grant funds.

Type of Review: Revision.

Agency: Employment and Training Administration, Department of Labor.

Title: Unemployment Insurance Trust Fund Activity, OMB Number: 1205–0154.

Affected Public: State government (State Employment Security Agencies).

Total Respondents: 50 States, Washington, DC, Puerto Rico, and the Virgin Islands.

Frequency: Monthly.

Total Responses: 636.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 636.

Total Burden Cost: 636 × $26.10 = $16,600.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 17, 1999.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 99–12912 Filed 5–20–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with the State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Acting Director of OTAA not later than June 1, 1999.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than June 1, 1999.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW Washington, DC 20210.

Signed at Washington, DC this 4th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Stonecutter Textiles (Wkrs)	Sprindale, NC	04/06/1999	NAFTA–3,076	Greige & finished fabric & yarn.
Cannondale (Wkrs)	Bedford, PA	03/30/1999	NAFTA–3,077	Bike clothing.
Columbia Sportswear (Wkrs)	Portland, OR	04/06/1999	NAFTA–3,078	Examine apparel.
Reach (Co.)	Klamath Falls, OR	04/05/1999	NAFTA–3,079	Lumber.
Good Lad (Wkrs)	Philadelphia, PA	04/07/1999	NAFTA–3,080	Dresses and shirts.
Siemens Information Communication (Wkrs).	Cherry Hill, NJ	03/29/1999	NAFTA–3,081	Voice & data communication equipment.
Breed Technologies (Wkrs)	Maryville, TN	04/06/1999	NAFTA–3,082	Vehicle Safety restraint (airbag).
C.R. Bard (Co.)	Covington, GA	04/09/1999	NAFTA–3,083	Medical devices.
Fort James (Co.)	Portland, OR	04/07/1999	NAFTA–3,084	Tite pak paper.
Plaid Clothing Co. Inc. (Union)	Somerset and Erlanger, KY.	03/25/1999	NAFTA–3,085	Men's tailored clothing.
J.P.S. Convertor (Wkrs)	Rocky Mount, VA	04/19/1999	NAFTA–3,086	Coats—cloth.
Berendsen Fluid Power (Co.)	Rahway, NJ	04/15/1999	NAFTA–3,087	Hydraulic power units/systems.
Barnett Bank (Wkrs)	Tampa, FL	04/02/1999	NAFTA–3,088	Data entry, credit & accounting.
Aloecorp (Wkrs)	Harlingen, TX	03/30/1999	NAFTA–3,089	Concentrator.
Chamberlain (Wkrs)	Waupaca, WI	04/12/1999	NAFTA–3,090	Garage door openers.
Harvard Industrial (Wkrs)	Farmington Hills, MI	04/08/1999	NAFTA–3,091	Automotive interior parts.
Goodyear Tire and Rubber (USWA)	Logan, OH	03/29/1999	NAFTA–3,092	Automotive instrument panels.
Thomson Consumer Electronics (Wkrs)	Mocksville, NC	04/12/1999	NAFTA–3,093	Wood television cabinets.
Oro Nevada Exploration (Wkrs)	Reno, NV	04/12/1999	NAFTA–3,094	Exploration for gold.
Nashville Textile (Wkrs)	Nashville, GA	04/14/1999	NAFTA–3,095	Legging & children sportswear.
Little Tikes (The)—Newell Rubbermaid (Co.).	Shippensburg, PA	04/13/1999	NAFTA–3,096	Plastic childrens toys.
Repap Technologies (Wkrs)	Valley Forge, PA	04/08/1999	NAFTA–3,097	Pulp and paper.
Carbide Graphite Group (Wkrs)	Calvert City, KY	04/13/1999	NAFTA–3,098	Calcium carbide & acetylene.
Genlight Thomas Group (IBEW)	Hopkinsville, KY	04/15/1999	NAFTA–3,099	Lighting fixtures recess and track.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Bethlehem Steel (USWA)	Steelton, PA	04/13/1999	NAFTA–3,100	Semi-fin & rall products.
Vans (Wkrs)	Santa Fe Springs, CA	04/14/1999	NAFTA–3,101	Shoes.
D and A Industries (UNITE)	El Paso, TX	04/15/1999	NAFTA–3,102	Women's coats.
Raider Apparel (Wkrs)	Alma, GA	04/16/1999	NAFTA–3,103	Ladies dress, pants, pants suits.
Sherman Lumber (PACE)	Sherman Station, ME	04/15/1999	NAFTA–3,104	Lumber products.
Equitable Bag (PACE)	Florence, KY	04/16/1999	NAFTA–3,105	Plastic bags.
General Electric (Wkrs)	Malvern, PA	04/16/1999	NAFTA–3,106	Power line carrier business.
Dal-Tile (Wkrs)	Dallas, TX	03/30/1999	NAFTA–3,107	Die for tile.
IEC Electronics (Wkrs)	Arab, AL	04/16/1999	NAFTA–3,108	Printed circuit boards.
Bonnell Manufacturing (UNITE)	Mt. Laurel, NJ	04/16/1999	NAFTA–3,109	Women's and girls dresses, gowns.
Sony Electronics (Co.)	San Diego, CA	04/20/1999	NAFTA–3,110	Computer monitors.
Seagull Energy—Ocean Energy (Co.)	Houston, TX	04/14/1999	NAFTA–3,111	Oil and gas.
Weatherford International—Trico (Co.)	Houston, TX	04/16/1999	NAFTA–3,112	Oilfield products.
Dynegy Midstream Service (Co.)	Houston, TX	04/01/1999	NAFTA–3,113	Natural gas.
Lab Volt Systems (Co.)	Farmingdale Wall Twp., NJ.	04/15/1999	NAFTA–3,114	Educational training systems.
D and E Wood Products (Co.)	Pineville, OR	04/22/1999	NAFTA–3,115	Wood shelving.
Hartmarx—Thorngate (UNITE)	Farmington, MO	04/22/1999	NAFTA–3,116	Men's dress slacks.
Adflex Solutions (Wkrs)	Chandler, AZ	04/20/1999	NAFTA–3,117	Drills and laser.
Varga Brakes (Co.)	Chesapeake, VA	04/20/1999	NAFTA–3,118	Auto parts.
Willow Creek Apparel (Co.)	Jonesville, NC	04/20/1999	NAFTA–3,119	Ladies sleepwear leisureware.
International Wire (IBT)	Mishawaka, IN	04/23/1999	NAFTA–3,120	Automotive wire.
Stanley Works (IAMAW)	New Britain, CT	04/19/1999	NAFTA–3,121	Door hinges.
Barko Hydraulics (BBF)	Superior, WI	04/21/1999	NAFTA–3,122	Log handling equipment.
Stroh Brewery Company (The) Wkrs)	Longview, TX	04/26/1999	NAFTA–3,123	Beers.
Eagle Picher Construction Equipment (IUOE).	Lubbock TX	04/26/1999	NAFTA–3,124	Bowl and tractor frame.
Leamco Ruthco—Weatherford Artificial (Wkrs).	Perryton, TX	04/26/1999	NAFTA–3,125	Pumping unit parts for oil and gas.
Jackes Evans (IBB)	St. Louis, MO	04/26/1999	NAFTA–3,126	Black stovepipes, stoveboards.
Polaroid (Wkrs)	Waltham, MA	04/14/1999	NAFTA–3,127	Instant film products.
Aromat Corporation—Relay Manufacturing (Co.).	San Jose, CA	04/27/1999	NAFTA–3,128	Electronic relays.
Lee Textile (Co.)	Ering, VA	04/28/1999	NAFTA–3,129	T-shirts.
Stroh Brewery Company (The) (Co.)	Winston-Salem, NC	04/26/1999	NAFTA–3,130	Beer.
Cole Haan Manufacturing (Co.)	Livermoore Falls, ME	04/28/1999	NAFTA–3,131	Footware, belts & leather goods.
Fairfield Industries (Co.)	Sugar Land, TX	04/29/1999	NAFTA–3,132	Oil and gas.
Young and Morgan Lumber (Co.)	Lyons, OR	04/29/1999	NAFTA–3,133	Lumber.
Filko Automotive (Wkrs)	Bradenton, FL	04/28/1999	NAFTA–3,134	Ignition wire sets.
International Electronics Research (Wkrs)	Burbank, CA	04/29/1999	NAFTA–3,135	Electronics chips and boards.
Rea Gold (Wkrs)	Reno, NV	04/29/1999	NAFTA–3,136	Gold bullion.
Nextrom (Wkrs)	Perth Amboy, NJ	04/26/1999	NAFTA–3,137	Wire drawing machines & spare parts.
Apollo Tanning (Co.)	Camden, ME	05/03/1999	NAFTA–3,138	Leather tanning.
Flow Control—R and Energy (Wkrs)	Borger, TX	04/26/1999	NAFTA–3,139	Wellheads for oil wells.

[FR Doc. 99–12910 Filed 5–20–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large

volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contained no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information from consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. CT990009, CT990010, CT990011 and CT990012 dated March 12, 1999. These Counties are now covered by CT990002.

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(I)(A), when opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless agency finds that there is insufficient time to notify bidders of the change and the finding is documented in contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, 202 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. This 13th Day of May 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–12578 Filed 5–20–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Noise Data Report Form and Calibration Records

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed reinstatement of the information collection related to the Coal Mine Noise Data Report and Calibration Records. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT:** section of this notice.

DATES: Submit comments on or before July 20, 1999.

ADDRESSES: Send comments to Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984.

Commenters are encouraged to send their comments on a computer disk, via E-mail to TOMalley@msha.gov, along with an original printed copy. Ms. O'Malley can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley Program Analysis Officer, Officer of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at TOMalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

This information is used to evaluate the average noise levels to which miners may be exposed. The information is evaluated to determine if miners working at a particular occupation or operating a particular type of equipment may be exposed to excessive noise levels. This type of information may be useful in determining if there is a need for MSHA to evaluate the miners work area, and to require the mine operator to develop a hearing conservation plan to adequately protect the miners from being exposed to excessive noise levels. In addition, the information may be used to determine if research is needed to assist in the development of engineering controls on equipment that typically generate high noise levels.

II. Current Actions

MSHA inspection personnel routinely conduct a noise survey from a representative number of miners working at various occupations. However, MSHA does not have the resources to conduct a noise survey from the working environment of all miners annually. MSHA relies on the information from the mine operators to determine if there is a need to evaluate the miners work area or to conduct a noise survey. In addition, when a

determination is made that the noise levels being generated by a particular type of equipment are typically above the permissible limits, MSHA uses this information to solicit input from the equipment manufacturers in determining if engineering changes can be made to the equipment to reduce the noise levels to within permissible limits.

Type of Review: Reinstatement.

Agency: Mine Safety and Health Administration.

Title: Noise Data Report Form and Calibration Records.

OMB Number: 1219–0037.

Agency Number: MSHA Form 2000–168.

Recordkeeping: 1 year.

Affected Public: Business or other for-profit.

30 CFR	Respondents	Frequency	Total responses	Average time per response	Burden hours
70.506:					
Calibrator	971	Annually	971	3 min	49
Dosimeter	971	Annually	971	3 min	49
70.508(a):					
Survey	47,998	Semi-Ann	95,996	15 min	24,000
Report	47,998	Semi-Ann	95,996	6 min	9,600
70.508(b):					
Survey/report	485	Semi-Ann	970	6 min	97
70.509:					
Survey	963	Annually	963	15 min	241
Report	963	Annually	963	6 min	96
71.803(a):					
Survey	47,340	Semi-Ann	94,680	15 min	23,670
Report	47,340	Semi-Ann	94,680	6 min	9,468
71.803(b):					
Certify	478	Semi-Ann	956	6 min	96
71.804(a):					
Survey	478	Annually	478	15 min	120
Report	478	Annually	478	6 min	48
Totals	196,463		388,102		67,534

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $423,040.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 18, 1999.

Theresa M. O'Malley,

Chief, Records Management Branch.

[FR Doc. 99–12913 Filed 5–20–99; 8:45 am]

BILLING CODE 4510–43–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Intent To Prepare an Environmental Impact Statement for the Lower Colorado River Boundary and Capacity Preservation Project, Yuma County, AZ

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: This notice advises the public that, pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC) proposes to gather information necessary for the preparation of an environmental impact statement (EIS). The EIS will address the impacts of preservation of the boundary and channel and carrying capacity, and maintenance activities by the USIBWC in the boundary section of the Colorado River. The project is located in Yuma County, Arizona. A public scoping meeting regarding this proposal will also be held. This notice is being provided as required by the Council on Environmental Quality (CEQ) Regulations (40 CFR 1501.7) and the USIBWC's Operational Procedures for Implementing Section 102 of the National Environmental Policy Act of 1969, published in the **Federal Register** September 2, 1981 (46 FR 44083–44094) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS.

DATES: The USIBWC will conduct a public scoping meeting at the Yuma Civic and Convention Center, 1440 West Desert Hills Drive, Yuma, Arizona, on June 9, 1999, from 6:00 p.m. to 8:00 p.m. Full public participation by interested federal, state, and local agencies as well as other interested organizations and the general public is encouraged during the scoping process which will end 45 days from the date of this notice. Public comments on the scope of the EIS, reasonable alternatives that should be considered, anticipated environmental problems, and actions that might be taken to address them are requested.

ADDRESSES: Comments will be accepted for 45-days following the date of this notice by Mr. Yusuf Farran, Division Engineer, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–310, El Paso, Texas 79902. Telephone: 915/832–4148, Facsimile 915/832–4167, E-mail: yusuffarran@ibwc.state.gov.

SUPPLEMENTARY INFORMATION: The USIBWC proposes to gather information necessary for the preparation of an EIS to be used to determine specific options for the preservation of the boundary and channel and carrying capacity, and maintenance activities by the Lower Colorado River Boundary and Capacity Preservation Project (LCRBCPP) that could be implemented. Implementation would be conducted in a manner to minimize, consistent with the law and international agreements, the impact of the activities of the project on ecological and environmental resources in the project area. The project area is the 23.7 mile (38.2 kilometer (km)) boundary segment of the Lower Colorado River from the Northerly International Boundary (NIB) to the Southerly

International Boundary (SIB) river reach bounded by the levees in Arizona and Baja California Norte, Mexico.

The EIS will discuss separately, among other laws and regulations, the requirements of international agreements with Mexico regarding the preservation of the boundary and channel and carrying capacity, and maintenance activities considered for the project, the Endangered Species Act, the Clean Water Act, the National Historic Preservation Act and others, as appropriate. Studies will include an analysis of impacts of alternatives for preservation of the boundary and channel and carrying capacity, and maintenance activities in relation to baseline flood flow design capacity, floodplain and channel maintenance, changes in the international boundary channel since 1972, and effects from upstream sediment input. Alternatives could include channel excavation/dredging, channel realignment, and levee improvements, or a combination of these alternatives.

The alternatives are influenced to varying degrees by obligations and rights reserved by the governments of the United States and Mexico in the Treaty for ''Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande'' signed on February 3, 1944 (1944 Water Treaty), the ''Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado Rivers as the International Boundary Between the United States of America and Mexico'' dated November 23, 1970, and international agreements concluded thereunder as International Boundary and Water Commission, United States and Mexico (IBWC) Minutes.

The EIS will address impacts in the United States of activities in the United States related to alternatives for a long term boundary preservation and carrying capacity improvement project, the LCRBCPP, which is under consideration by the United States and Mexico for the project reach. None of these conditions can be dealt with effectively as a single issue or proposed project. The land and works located between the international boundary and the inside toe of the United States levee are owned, controlled and managed through several arrangements of a domestic, Federal and international nature. A range of options for the domestic and international activities encompassed in the study area of the Colorado River channel and floodway in the United States that could be implemented by the USIBWC will be considered. Operations and maintenance, in part, of the LCRBCPP fall within the realm of the international agreements governing the project and are therefore not a subject of the EIS. The USIBWC does not have unilateral control of all of the LCRBCPP and thus cannot make commitments which are international and controlled by the IBWC. The international and domestic activities are noted as follows.

Morelos Dam, located 1.1 miles (1.8 km) downstream of NIB, is an international gated structure and weir spanning from levee to levee in the channel and floodplain used for a variety of requirements and agreements. The Colorado River clearing program is an international program and involves bank clearing to facilitate passage of the design flow of 140,000 cubic feet per second (3,960 cubic meters per second). Carrying capacity improvements is an emergency international program to assure deliveries of water to Mexico and consists of sediment removal. The hydrography program is an international program consisting of operations and maintenance of gaging stations. The boundary preservation program is an international floodplain management program designed to preserve and maintain the channel as the international boundary.

United States floodplain features include incidental water systems consisting of a levee, bypass channel, and adjacent lands. Other features include the river floodplain consisting of access roads, water conveyance system components, farmlands, and vegetation in various stages of disturbance. The main channel is a United States floodplain feature which, upstream of Morelos Dam, carries flows which are allocated to Mexico by the 1944 Water Treaty, along with occasional high flows. Downstream of Morelos Dam, the channel carries only surface water from leakage from Morelos Dam and occasional high flows. There is more stream vegetation in the first 5.5 miles (8.9 km) below Morelos Dam than in the downstream portion to the SIB.

The EIS will identify, describe, and evaluate the existing environmental, cultural, hydrological, socioeconomic and recreational resources; describe products for boundary mandates; explain channel carrying capacity, levee improvements and floodplain maintenance; and evaluate impacts associated with the alternatives under consideration. Significant issues which have been identified to be addressed in the EIS include, but are not limited to, affects on: (a) fish and wildlife; (b) endangered species; (c) terrestrial and aquatic habitats; (d) cultural resources; (e) river channel capacity; (f) international boundary alignment; and (g) water quality.

External coordination will be conducted to include the United States Fish and Wildlife Service to insure compliance with section 7 of the Endangered Species Act of 1973, as amended, and the Fish and Wildlife Coordination Act. Cultural resources reconnaissance of the project area will be coordinated with the Arizona State Historic Preservation Officer. Coordination for the Clean Water Act will also be conducted, with the appropriate authorities.

The environmental review of this project will be conducted in accordance with the requirements of NEPA, CEQ Regulations (40 CFR Parts 1500–1508), other appropriate federal regulations, and the USIBWC procedures for compliance with those regulations. Copies of the EIS will be transmitted to federal and state agencies and other interested parties for comments and will be filed with the Environmental Protection Agency in accordance with 40 CFR Parts 1500–1508 and USIBWC procedures.

The USIBWC anticipates the Draft EIS will be made available to the public by approximately January, 2001.

Dated: May 14, 1999.

William A. Wilcox, Jr.,

Legal Advisor.

[FR Doc. 99–12836 Filed 5–20–99; 8:45 am]

BILLING CODE 7010–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is

published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 6, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, National Appeals Division (N1–16–98–1, 1 item, 1 temporary item). Correspondence, hearing notices, reports, authorizations for representation, and other supporting materials accumulated in connection with administrative appeal hearings and reviews. Actions arise from adverse decisions affecting beneficiaries of USDA programs.

2. Department of Agriculture, Agricultural Stabilization and Conservation Service (N1–145–98–1, 32 items, 29 temporary items). Facilitative records pre-dating 1962 that relate to such matters as acreage allotments, commodities' sales, loan rates, subsidies, cost surveys, and price supports. Records were accumulated primarily in the 1950s and 1960s. Procedural issuances and files relating to the development of milk industry regulation are proposed for permanent retention as are records pertaining to a multi-million dollar claim stemming from the spoilage of stored grain.

3. Department of Commerce, Census Bureau (N1–29–99–4, 2 items, 2 temporary items). Completed questionnaires in paper and electronic format of the Survey of Minority-Owned and Women-Owned Business Enterprises. The final survey data in electronic form was previously approved for permanent retention.

4. Department of Defense, Office of the Inspector General (N1–509–99–2, 3 items, 3 temporary items). Memoranda of Understanding or Agreement Files consisting of agreements with other Defense agencies regarding audit procedures and related matters and with non-Defense agencies and non-Federal entities regarding training and other services. Included are electronic copies of documents created using electronic mail, word processing, and other office automation applications.

5. Department of Education, Office of Postsecondary Education (N1–441–98–1, 5 items, 5 temporary items). Paper and electronic records (CD–ROM) relating to the evaluation of applications from governmental and non-governmental entities seeking Department of Education recognition as accrediting agencies. Included are accreditation case files for agencies recommended for approval or disapproval, containing applications for accreditation, interim reports, and other correspondence, and CD–ROM copies of case files for agencies recommended for approval. Also included are working papers, consisting of drafts, notes, and other background materials, and electronic copies of documents created using electronic mail and word processing.

6. Department of Health and Human Services, National Institutes of Health (N1–443–99–4, 4 items, 4 temporary items). Records relating to clinical care including PET (Positron Emission Topography) files, records which identify and describe blood products received from other collection facilities, laboratory testing records, and records associated with patient testing, donor testing, or blood product manufacturing, which contain documentation related to validation, maintenance and quality assurance of equipment, supplies, reagents and processes.

7. Department of Justice, U.S. Parole Commission (N1–438–98–1, 1 item, 1 temporary item). District of Columbia Board of Parole Case Files which include data on sentence and information concerning the prisoner's background and behavior during incarceration and while on parole. Also included are parole hearings on individual prisoners.

8. Department of State, Bureau of Educational and Cultural Affairs (N1–59–99–19, 1 item, 1 temporary item). Designated Exchange Visitor Case Files

dating from 1950 to 1973 that pertain to applications for the establishment, revision, or cancellation of exchange programs. More recent records accumulated after the Bureau was transferred to the United States Information Agency were previously approved for disposal.

9. Department of State, Bureau of European Affairs, (N1–59–99–20, 11 items, 8 temporary items). Administrative files relating to the logistics of organizing the 1998 Washington Conference on Holocaust-Era Assets. Included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are the record-keeping copies of files relating to the substantive issues addressed by the Conference.

10. Securities and Exchange Commission, Office of the Inspector General (N1–266–99–1, 7 items, 5 temporary items). Files relating to investigations and audits including correspondence, reports, notes, attachments, drafts, and background papers. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of significant investigative files and final audit reports are proposed for permanent retention.

11. Department of Veterans Affairs, Veterans Health Administration (N1–15–98–3, 4 items, 4 temporary items). Means test verification records used to determine individual veterans' fiscal eligibility for health care provided by the VA. Included are paper records and records on optical disk and other electronic media. Records also include computer tapes provided by the Internal Revenue Service and the Social Security Administration.

12. Tennessee Valley Authority, Communications Program (N1–142–99–4, 2 items, 1 temporary item). Electronic copies of documents created using word processing pertaining to Inside TVA, a newspaper for employees that has limited external distribution. Recordkeeping copies of these files are proposed for permanent retention.

Dated: May 12, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–12845 Filed 5–20–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: June 14, 1999, from 10:00 a.m. to 11:30 a.m.

ADDRESSES: United States Capitol Building, Room S–211.

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

Update—Legislative Information Systems
Update—Archives I Renovation
Five-Year Report to Congress
Update—Center for Legislative Archives
Other current issues and new business

The meeting is open to the public.

Dated: May 17, 1999.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 99–12846 Filed 5–20–99; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Proposed Rule, 10 CFR part 52, Appendix C, Design Certification Rule for the AP600 Design.

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Designers of commercial nuclear power plants, electric power utilities, and any person eligible under the Atomic Energy Act to apply for a construction permit for a nuclear power plant.

6. An estimate of the number of responses: No applications are expected during the next three years.

7. The estimated number of annual respondents: No applications are expected during the next three years.

8. An estimate of the total number of hours needed annually to complete the requirement or request: Approximately 24 additional burden hours (8 hours each for 3 additional reports that result from changing the requirement from an annual to quarterly report). No reports are expected during the next three years.

9. An indication of whether section 3507(d), Public Law 104–13 applies: Applicable.

10. Abstract: The proposed rule would add appendix C to 10 CFR part 52 to allow interested parties to reference a certified AP600 design in an application for a construction permit or combined license. In general, the information collection requirements are the same as those contained in 10 CFR part 52. The addition of appendix C to 10 CFR part 52 adds a small incremental reporting burden.

The NRC will use the reported information to monitor changes to the facility and gain an understanding of how the as-built facility conforms to the certified design.

Submit, by June 21, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. The proposed rule indicated in ''The title of the information collection'' is or has been published in the **Federal Register** within several days of the publication

date of this **Federal Register** Notice. Instructions for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of the public may access the electronic OMB clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking.

Comments and questions should be directed to the OMB reviewer by June 21, 1999. Erik Godwin, Office of Information and Regulatory Affairs (3150–0151), NEOB–10202, Office of Management and Budget, Washington DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 14th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–12900 Filed 5–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 48 CFR part 20, U.S. Nuclear Regulatory Commission Acquisition Regulation (NRCAR).

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion; one time.

5. *Who is required or asked to report:* Offerors responding to NRC solicitations and contractors receiving contract awards from NRC.

6. *An estimate of the number of responses:* 11,311.

7. *The estimated number of annual respondents:* 750.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 120,449 hours (10.7 hours per response).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not Applicable.

10. *Abstract:* The mandatory requirements of the NRCAR implement and supplement the government-wide Federal Acquisition Regulation, and ensure that the regulations governing the procurement of goods and services within the NRC satisfy the needs of the agency.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide website *(http://www.nrc.gov/NRC/PUBLIC/OMB/index.html).* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by June 21, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Eric Godwin, Office of Information and Regulatory Affairs (3150–0169), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 415–7233.

Dated at Rockville, MD, this 17th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–12902 Filed 5–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* ''Request for Approval of Foreign Travel''.

3. *The form number if applicable:* NRC Form 445.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Contractors and consultants who travel to foreign countries in the course of conducting business for the NRC.

6. *An estimate of the number of responses:* 30.

7. *The estimated number of annual respondents:* 30.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 30.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Information forwarded on NRC Form 445, Request for Approval of Foreign Travel, is supplied by consultants and contractors who travel to foreign countries in the course of conducting business for the NRC. In accordance with 48 CFR part 20, ''NRC Acquisition Regulation,'' contractors traveling to foreign countries are required to complete this form. The information requested includes the name of the Office Director/Regional Administrator recommending travel, approval by the Office Director, Regional Administrator or Chairman, as appropriate, the traveler's identifying information, purpose of travel, a listing of the trip coordinators, other NRC travelers and contractors attending the same meeting, and a proposed itinerary.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed

below by June 21, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, MD, this 17th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–12903 Filed 5–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–249]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–25, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of the Dresden Nuclear Power Station, Unit 3, located in Grundy County, Illinois.

The proposed amendment would reduce the number of safety valves required for overpressure protection at Dresden, Unit 3, by excluding from Technical Specifications (TS) section 3.6.E the safety valve function of the Target Rock safety/relief valve (SRV). The proposed amendment would also move the safety valve lift pressure setpoints from TS section 3.6.E to TS section 4.6.E.

This request for amendment was submitted under exigent circumstances to prevent undue shutdown or derate of the unit due to the safety valve function of the Target Rock safety/relief valve becoming inoperable on May 3, 1999. The time necessary for ComEd to develop this TS request would not allow the normal 30-day period for public comment since ComEd had no prior knowledge of this inoperability.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC-approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed change to permit operation with the Target Rock valve safety function OOS (out of service) does not affect the ability of plant systems to adequately mitigate the consequences of an accident previously evaluated.

This conclusion was derived by evaluating all applicable analyses including thermal limit, ASME (American Society of Mechanical Engineers) pressurization events, margin to unpiped safety valve, anticipated transient analysis without scram, LOCA (loss of coolant accident), station blackout, and Appendix R analyses. Therefore, there is no increase in the probability or consequences of an accident previously evaluated because the analyses support operation with the Target Rock SRV safety function OOS.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Since the requested change has been previously evaluated, no new precursors of an accident are created and no new or different kinds of accidents are created. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This conclusion was derived by evaluating all applicable analyses including thermal limit, ASME pressurization events, margin to unpiped safety valve, anticipated transient analysis without scram events, station blackout, and Appendix R analyses. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the analyses support operation with the Target Rock SRV safety function OOS.

3. Does the change involve a significant reduction in a margin of safety?

Allowing Dresden operation with the Target Rock SRV safety function out of service will not involve any reduction in margin of safety. This conclusion was derived by evaluating all existing analyses including thermal limit, ASME pressurization events, margin to unpiped safety valve, anticipated transient analysis without scram events, station blackout, and Appendix R analyses. The analyses previously evaluated remain valid and conservative. Thus there is no reduction in the margin of safety.

Therefore, based upon the above evaluation, ComEd has concluded that these changes do not constitute a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received by close of business (4:15 p.m. EDST) within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant

hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 21, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, US Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 5, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room, located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 18th day of May 1999.

For the Nuclear Regulatory Commission.

Lawrence W. Rossbach,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–13023 Filed 5–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

GPU Nuclear Inc., et al; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of GPU Nuclear, Inc., et al., (the licensee) to withdraw its August 29, 1996, application as supplemented by letter dated October 3, 1996, for proposed amendment to Facility Operating License No. DPR–50 for the Three Mile Island Nuclear Station, Unit No. 1, located in Dauphin County, Pa.

The proposed amendment requested deletion of several limiting conditions for operation and related surveillance requirements that the licensee judged did not meet the criteria for inclusion in technical specifications (TS) as set forth in 10 CFR 50.36(c)(2)(ii) and are not included in the Revised Standard Technical Specifications for B&W plants as delineated in NUREG 1430. The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 18, 1996 (61 FR 66708). However, by letter dated April 27, 1999, the licensee withdrew the proposed change request.

For further details with respect to this action, see the application for amendment dated August 29, 1996, as supplemented October 3, 1996, and the licensee's letter dated April 27, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, P.O. Box 1601, Harrisburg, PA 17105.

Dated at Rockville, MD, this 14th day of May 1999.

For the Nuclear Regulatory Commission.

Timothy G. Colburn, Sr.,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–12904 Filed 5–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989]

Order To Exempt Envirocare of Utah, Inc. From Certain NRC Licensing Requirements for Special Nuclear Material

Background

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing an Order pursuant to section 274f of the Atomic Energy Act to Envirocare of Utah, Inc. (Envirocare) from certain NRC regulations. The exemption will allow Envirocare, under specified conditions, to possess waste containing special nuclear material (SNM), in greater mass quantities than specified in 10 CFR part 150, at Envirocare's low-level waste (LLW) disposal facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR part 70. NRC has previously published an Environmental Assessment (EA) and Finding of No Significant Impact in the **Federal Register**. In addition, a description of the operations at the facility and staff's safety analysis for the exemption are discussed in a Safety Evaluation Report (SER), which is available in the public docket room.

Order

I.

Envirocare of Utah, Inc. (Envirocare) operates a low-level waste disposal facility in Clive, Utah. This facility is licensed by the State of Utah, an NRC Agreement State, under a 10 CFR part 61 equivalent license (UT 2300249). In 1988, Envirocare began accepting naturally occurring radioactive material (NORM) waste. In 1992, Envirocare began accepting very low activity, low-level waste (LLW) primarily generated during the decommissioning of nuclear facilities. Envirocare's State of Utah radioactive materials license (RML) has been amended to permit disposal of other types of LLW. Envirocare is also licensed by Utah to dispose of mixed radioactive and hazardous wastes (MW). In addition, Envirocare has an NRC license to dispose of waste containing 11(e)2 byproduct material. The MW and 11(e)2 byproduct material are disposed of in separate disposal cells from the LLW. The MW and LLW streams may contain quantities of special nuclear material (SNM).

Envirocare receives wastes by rail and truck. Separate storage and disposal facilities exist for the LLW and MW. Envirocare's method of disposal is to remove the waste from its container or dump bulk waste into lifts and compact the material. Subsequent lifts of material are placed above completed lifts. The waste streams are diverse and vary from contaminated soils and debris from decommissioning facilities to dry active waste (DAW) and resins from operating facilities.

In addition to disposing of mixed waste, Envirocare also has capabilities to treat mixed waste prior to disposal. This treatment typically includes chemically stabilizing of hazardous constituents by mixing the waste with various reagents, and micro- and macro-encapsulation of waste with low density polyethylene plastic. The applicable hazardous waste regulations require bench scale treatability studies prior to treating the bulk of the waste.

II

Pursuant to 10 CFR 70.14, ''the Commission may * * * grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.''

Section 70.3 of 10 CFR Part 70 requires persons who own, acquire, deliver, receive, possess, use, or transfer SNM to obtain a license pursuant to the requirements in 10 CFR Part 70. Section 10 CFR 150.10 exempts persons in Agreement States, who possess SNM in quantities not sufficient to form a critical mass, from Commission-imposed licensing requirements and regulations. The method for calculating a quantity of SNM not sufficient to form a critical mass is set forth in 10 CFR 150.11. Therefore, Envirocare is currently limited by regulation and its State of Utah license to possess SNM in quantities set out in 10 CFR 150.10 and 150.11. The SNM possession limits in the regulation and license, as they relate to LLW disposal facilities, apply to above-ground possession prior to disposal. Therefore, once the SNM is disposed of, the possession limits no longer apply.

In response to an inspection by the State of Utah which determined that Envirocare had exceeded its Agreement State license limits for the possession of U-235, NRC conducted its own

inspection of the facility. As a result of this inspection, NRC issued a Confirmatory Order (Order), dated June 25, 1997, which required Envirocare to reduce its possession of SNM to the amounts prescribed in 10 CFR 150.11 and Envirocare's Agreement State license, and to submit a compliance plan (CP) for meeting 10 CFR 150.10 and 150.11 to NRC for approval. Condition 3 of the Order required Envirocare to include all SNM in the restricted area at the site in applying the limitations in 10 CFR 150.10 and 150.11. Envirocare submitted a CP dated July 23, 1997, which was approved by NRC in a letter, dated August 1, 1997. Under the provisions of the CP, all waste containing SNM with the exception of waste ''in transport'' which is located within the restricted area at Envirocare's site is subject to the limitations in 10 CFR 150.10 and 150.11. However, trucks containing SNM waste can proceed directly to the disposal cell and would be considered ''in transport'' and not in Envirocare's possession. This condition is applicable provided that the waste was disposed of on the same calendar day as arrival, and that the amount of SNM in any individual truck did not exceed the limits in 10 CFR 150.11. When NRC approved the CP on August 13, 1997, Condition 3 of the Order was revised to incorporate the terms of the CP.

When Envirocare submitted its July 23, 1997, CP, it noted that application of the ''in transport'' approach to rail shipments and shipments disposed on the same day they are received would greatly assist operational flexibility at no risk to public health and safety. Based on consultation with the U.S. Department of Transportation (DOT), the NRC has concluded that the ''in transport'' approach would not apply to rail shipments. However, the staff believes the circumstances warrant some action to provide Envirocare the needed flexibility without undue risk to public health and safety. The NRC staff has been informed that, in order to accommodate possession limits, rail shipments containing SNM waste are being transferred to trucks in Salt Lake City, Utah, for transport to the Envirocare disposal facility. In response to questions raised in a letter from the State of Utah, NRC accompanied DOT on an inspection of the Salt Lake City rail yard and to the carriers facilities. DOT concluded that the process observed met DOT's requirements; however, NRC staff concluded that the process resulted in an increased number of trips, leading to a slightly higher probability of a transportation accident. Prior to the Order and CP, these shipments were transported by rail directly to the site. Thus the Order and CP have led to increased waste handling and the increased possibility of container rupture and resultant spillage in a metropolitan area.

III

NRC staff has reviewed the current shipping practice and considers it to be less desirable from a health and safety standpoint than having the rail cars proceed directly to the site. However, Condition 3 of the Order and the CP, as they now stand, effectively preclude many rail cars containing SNM from being brought onto the Envirocare site. Envirocare would need to obtain a license or an exemption from the NRC under 10 CFR part 70 that would permit it to possess the SNM in the cars on the site. Such SNM might well exceed the limits in 10 CFR 150.10 and 150.11, as well as the limits of the State of Utah license.

In this instance, the staff believes that the appropriate action is to issue Envirocare an exemption. Specifically, Envirocare would be exempted from the requirements of 10 CFR part 70, including the requirements for an NRC license in 10 CFR 70.3, for SNM within the restricted area at Envirocare's site, provided that:

1. Concentrations of SNM in individual waste containers must not exceed the following values at time of receipt:

Radionuclide	Maximum concentration (pCi/g)	Measurement uncertainty (pCi/g)
U-235[a]	1900	285
U-235[b]	1190	179
U-235[c]	160	24
U-235[d]	680	102
U-233	75,000	11,250
Pu-236	500	75
Pu-238	10,000	1,500
Pu-239	10,000	1,500
Pu-240	10,000	1,500
Pu-241	350,000	50,000
Pu-242	10,000	1,500
Pu-243	500	75
Pu-244	500	75

[a] For uranium below 10 percent enrichment and a maximum of 20 percent MgO of the weight of the waste.

[b] For uranium at or above 10 percent enrichment and a maximum of 20 percent MgO of the weight of the waste.

[c] For uranium at any enrichment with unlimited MgO or beryllium.

[d] For uranium at any enrichment with sum of MgO and beryllium not exceeding 49 percent of the weight of the waste.

The measurement uncertainty values in column 3 above represent the maximum one-sigma uncertainty associated with the measurement of the concentration of the particular radionuclide.

The SNM must be homogeneously distributed throughout the waste. If the SNM is not homogeneously distributed, then the limiting concentrations must not be exceeded on average in any contiguous mass of 145 kilograms.

2. Except as allowed by notes a, b, c, and d in Condition 1, waste may not contain ''pure forms'' of chemicals containing carbon, fluorine, magnesium, or bismuth in bulk quantities (e.g., a pallet of drums, a B–25 box). By ''pure forms,'' it is meant that mixtures of the above elements such as magnesium oxide, magnesium carbonate, magnesium fluoride, bismuth oxide, etc. do not contain other elements. These chemicals would be added to the waste stream during processing, such as at fuel facilities, or treatment such as at mixed waste treatment facilities. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

3. Except as allowed by notes c and d in Condition 1, waste accepted may not contain total quantities of beryllium, hydrogenous material enriched in deuterium, or graphite above one percent of the total weight of the waste. The presence of the above materials will be determined by the generator, based on process knowledge, physical observations, or testing.

4. Waste packages may not contain highly water soluble forms of uranium greater than 350 grams of uranium-235 or 200 grams of uranium-233. The sum of the fractions rule will apply for mixtures of U-233 and U-235. Highly soluble forms of uranium include, but are not limited to: uranium sulfate, uranyl acetate, uranyl chloride, uranyl formate, uranyl fluoride, uranyl nitrate, uranyl potassium carbonate, and uranyl sulfate. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

5. Mixed waste processing of waste containing SNM must be limited to stabilization (mixing waste with reagents), micro-encapsulation, and macro-encapsulation using low-density polyethylene.

6. Envirocare shall require generators to provide the following information for each waste stream:

Pre-Shipment

1. Waste Description. The description must detail how the waste was generated, list the physical forms in the waste, and identify uranium chemical composition.

2. Waste Characterization Summary. The data must include a general description of how the waste was characterized (including the volumetric extent of the waste, and the number, location, type, and results of any analytical testing), the range of SNM concentrations, and the analytical results with error values used to develop the concentration ranges.

3. Uniformity Description. A description of the process by which the waste was generated showing that the spatial distribution of SNM must be uniform, or other information supporting spatial distribution.

4. Manifest Concentration. The generator shall describe the methods to be used to determine the concentrations on the manifests. These methods could include direct measurement and the use of scaling factors. The generator shall describe the uncertainty associated with sampling and testing used to obtain the manifest concentrations.

Envirocare shall review the above information and, if adequate, approve in writing this pre-shipment waste characterization and assurance plan before permitting the shipment of a waste stream. This will include statements that Envirocare has a written copy of all the information required above, that the characterization information is adequate and consistent with the waste description, and that the information is sufficient to demonstrate compliance with conditions 1 through 4. Where generator process knowledge is used to demonstrate compliance with conditions 1, 2, 3, or 4, Envirocare shall review this information and determine when testing is required to provide additional information in assuring compliance with the conditions. Envirocare shall retain this information as required by the State of Utah to permit independent review.

At Receipt

Envirocare shall require generators of SNM waste to provide a written certification with each waste manifest that states that the SNM concentrations reported on the manifest do not exceed the limits in Condition 1, that the measurement uncertainty does not exceed the uncertainty value in Condition 1, and that the waste meets conditions 2 through 4.

7. Sampling and radiological testing of waste containing SNM shall be performed in accordance with the Utah Division of Radiation Control license Condition 58.

8. Envirocare shall notify the NRC, Region IV office within 24 hours if any of the above conditions are violated. A written notification of the event must be provided within 7 days.

9. Envirocare shall obtain NRC approval prior to changing any activities associated with the above conditions.

Considering that this exemption will permit Envirocare to exceed the SNM possession limits in 10 CFR part 150 which will be in direct conflict with the Confirmatory Order dated June 25, 1997, the Confirmatory Order is hereby rescinded when this Order becomes effective. Moreover, the provisions in Envirocare's CP will no longer be in effect.

The licensing requirements in 10 CFR part 70 apply to persons possessing greater than critical mass quantities (as defined in 10 CFR 150.11). The principle emphasis of part 70 is criticality safety and safeguarding SNM against diversion or sabotage. The NRC staff believes that criticality safety can be maintained by relying on concentration limits, under the specified conditions. Section 150.11 establishes the quantities of SNM considered not sufficient to form a critical mass. The concentration limits in this notice are considered as an acceptable alternative to the definition provided in § 150.11, thereby assuring the same level of protection. Moreover, storing the SNM within the Envirocare restricted area will increase the security and safeguarding of the SNM.

Therefore, the Commission concludes that this proposed exemption will have no significant radiological or nonradiological environmental impacts.

IV

Based on the above evaluation, the Commission has determined, pursuant to 10 CFR 70.14, that the exemption of above activities at the Envirocare disposal facility is authorized by law, and will not endanger life or property or the common defense and security and are otherwise in the public interest. Accordingly, by this Order the Commission hereby grants this exemption. The exemption will become effective after the State of Utah has incorporated the above conditions into Envirocare's RML.

Pursuant to the requirements in 10 CFR part 51, the Commission has published an EA for the proposed action wherein it has determined that the granting of this exemption will have no significant impacts on the quality of the human environment. Copies of the EA and SER are available for public inspection at the Commission's Public Document Room, located at 2120 L Street, NW, Washington, DC 20037.

Dated at Rockville, MD., this 7th day of May 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–12905 Filed 5–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 40–8102]

Exxon Corp., Highlands, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) proposes to amend Exxon Corporation's (Exxon's) Source Material License SUA–1139, to allow alternate concentration limits (ACLs) for groundwater hazardous constituents at the Highland uranium mill site in Converse County, Wyoming. An Environmental Assessment (EA) was performed by the NRC staff in accordance with the requirements of 10 CFR part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for this licensing action.

SUPPLEMENTARY INFORMATION:

Background

By letter of December 18, 1998, Exxon requested that Source Material License SUA–1139 be amended to allow ACLs for groundwater constituents, nickel, radium-226 & 228 combined, and natural uranium, at Exxon's Highland uranium mill site. Exxon's application for ACLs proposed discontinuing the site groundwater corrective action program (CAP) in order to complete placement of the final radon barrier over the tailings and complete reclamation of the site. In order to terminate the CAP, the licensee must meet 10 CFR part 40, appendix A, Criterion 5B(5), which requires that, at the point of compliance (POC), the concentration of a hazardous constituent must not exceed the established background concentration of that constituent, the maximum concentration limits (MCLs) given in Table 5C of Appendix A, or an alternate concentration limit established by the NRC. The receipt of Exxon's request by NRC and a Notice of Opportunity for a Hearing were published in the **Federal Register** on January 13, 1999.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is an amendment to SUA–1139 to allow the application of ACLs for groundwater hazardous constituents, nickel, radium-226 & 228 combined, and uranium at the Exxon Highland facility, as provided in 10 CFR part 40, appendix A, Criterion 5B(5). The NRC staff's review was conducted in accordance with the ''Staff Technical Position, Alternate Concentration Limits for Title II Uranium Mills,'' dated January 1996.

Based on its evaluation of Exxon's amendment request, the NRC staff has concluded that granting Exxon the request for ACLs will not result in significant impacts. The staff decision was based on information provided by Exxon, demonstrating that its proposed ACLs would not pose a substantial present or potential future hazard to human health and the environment, and are as low as is reasonably achievable (ALARA). A review of alternatives to the requested action indicates that implementation of alternate methods would result in little net reduction of groundwater constituent concentrations.

Conclusion

The NRC staff concludes that approval of Exxon's amendment request to allow ACLs for groundwater hazardous constituents will not cause significant health or environmental impacts.

The following statements summarize the conclusions resulting from the EA:

1. Currently, all concentrations of hazardous constituents of concern to NRC meet the proposed groundwater ACLs for the site at the POC wells.

2. Present and potential health risks were assessed for various exposure scenarios, using conservative approaches. The result of these assessments indicates that present and potential future hazardous constituent concentrations at the specified POEs will not pose significant risks to human health and the environment. The POEs are located within or at the long-term care area boundary which will be maintained for long-term care by the U.S. Department of Energy following termination of the Exxon license.

3. Climatological extremes and sparse vegetation indicate that future use of groundwater is likely to be limited to seasonal livestock (e.g., cattle) and wildlife (e.g., pronghorn antelope) watering. Domestic use of groundwater from the tailings dam sandstone at the site is highly unlikely because of the low volume of water available in the unit, and the remote location of the site.

4. Additional corrective action will have little effect on the net reduction of constituent concentrations of concern to the NRC and, therefore, will have little impact on groundwater quality.

Because the staff has determined that there will be no significant impacts associated with approval of the amendment request, there can be no disproportionately high and adverse effects or impacts on minority and low-income populations. Except in special cases, these impacts need not be addressed for EAs in which a FONSI is made. Special cases may include regulatory actions that have substantial public interest, decommissioning cases involving onsite disposal in accordance with 10 CFR 20.2002, decommissioning/decontamination cases which allow residual radioactivity in excess of release criteria, or cases where environmental justice issues have been previously raised. Consequently, further evaluation of ''Environmental Justice'' concerns, as outlined in NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Rev. 1, is not warranted.

Alternatives to the Proposed Action

Since the licensee has demonstrated that the proposed ACL values will not pose substantial present or potential hazards to human health and the environment, and that the proposed ACLs are ALARA, considering practicable corrective actions, establishing other standards more stringent than the proposed ACLs was not evaluated. Furthermore, since the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. The licensee evaluated various alternatives, including continuation of the CAP, and demonstrated that those alternatives would result in little net reduction of constituent concentrations. Because the environmental impacts of the proposed action and the no-action alternative are similar, there is no need to further evaluate alternatives to the proposed action.

Finding of No Significant Impact

The NRC staff has prepared an EA for this action. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from this action would not be significant, and, therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this action are being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level).

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

Dated at Rockville, Maryland, this 14th day of May, 1999.

For the Nuclear Regulatory Commission.

N. King Stablein,

Acting Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–12901 Filed 5–20–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. IC–23841, 812–11414]

AIM Advisor Funds, Inc., et al.; Notice of Application

May 14, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (the ''Act'') for exemptions from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of the Application: The requested order would permit certain registered management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

Applicants: AIM Advisor Funds, Inc., AIM Eastern Europe Fund, AIM Equity Funds, Inc., AIM Funds Group, AIM Growth Series, AIM International Funds, Inc., AIM Investment Funds, AIM Investment Securities Funds, AIM Series Trust, AIM Special Opportunities Funds, AIM Summit Fund, Inc., AIM Tax-Exempt Funds, Inc., AIM Variable Insurance Funds, Inc., Emerging Markets Debt Portfolio, Floating Rate Portfolio, Global Investment Portfolio, Growth Portfolio, G.T. Global Floating Rate Fund, Inc., G.T. Global Variable Investment Series, G.T. Global Variable Investment Trust, Short-Term

Investments Co., Short-Term Investments Trust, Tax-Free Investments Co., and all existing and future registered management investment companies for which AIM Advisors, Inc. (''AIM'') serves in the future as in investment adviser (collectively, the ''Investment Companies'') and all series of the Investment Companies.

Filing Dates: The application was filed on November 25, 1998, and amended on April 16, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 8, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 11 Greenway Plaza, Suite 100, Houston, Texas 77046–1173.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney-Advisor, at (202) 942–0517, or Michael W. Mundt, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each of the Investment Companies is an open-end management investment company registered under the Act, except for AIM Eastern Europe Fund and G.T. Global Floating Rate Fund, Inc., which are registered under the Act as closed-end management investment companies. The Investment Companies currently consist of over one hundred ten (110) series (the series and any Investment Companies that do not have series, together with any future such series or Investment Companies, the ''Funds''), eleven of which hold themselves out as money market funds and are subject to the requirements of rule 2a–7 under the Act (together with any future money market Funds, the ''Money Market Funds'').[1] AIM is the investment adviser to each Fund and is registered under the Investment Advisers Act of 1940.

2. Applicants state that each of the Funds has, or may have, uninvested cash held by its custodian. Such cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments, or new investor capital (''Uninvested Cash''). Most Funds also may participate in a securities lending program under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors (''Securities Lending Program''). The loans are continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash (''Cash Collateral,'' and together with Uninvested Cash, ''Cash Balances'').

3. Applicants request an order to permit certain Funds (''Investing Funds'') to invest their Cash Balances in one or more of the Money Market Funds, and the Money Market Funds to sell their shares to, and redeem their shares from, the Investing Funds. Investment of Cash Balances in shares of the Money Market Funds will be made only to the extent that such investments are consistent with each Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from the limitations of section 12(d)(1)(A) and (B) to permit the Investing Funds to invest Cash Balances in Money Market Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Money Market Fund will maintain a highly liquid portfolio, an Investing Fund will not be in a position to gain undue influence over a Money Market Fund through threat of redemption. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, asset-based distribution fee or service fee, or if the shares are subject to any such fee, AIM will waive its advisory fee for each Investing Fund in an amount that offsets the amount of the fee incurred by the Investing Fund. In connection with approving any advisory contract for an Investing Fund, the Investing Fund's board of trustees or directors (the ''Board''), including a majority of the trustees or directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Directors''), will consider to what extent, if any, the advisory fees charged to the Investing Fund by AIM should be reduced to account for reduced services provided to the Investing Fund by AIM as a result of the investment of Uninvested Cash in the Money Market Funds. Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A).

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly controlling,

[1] All Funds that currently intend to rely on the requested order are named as applicants. Any other existing or future Fund that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

controlled by , or under common control with the other person. Applicants state that, because the Funds share a common investment adviser, each Fund may be deemed to be under common control with each of the other Funds, and thus an affiliated person of each of the other Funds. As a result, section 17(a) would prohibit the sale of the shares of the Money Market Funds to the Investing Funds, and the redemption of the shares by the Money Market Funds.

5. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the SEC to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Money Market Funds by the Investing Funds satisfies the standards in sections 6(c) and 17(b). Applicants note that shares of the Money Market Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Investing Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies if they believe they can obtain a higher rate of return, or for any other reason. The Money Market Funds have the right to discontinue selling shares to any of the Investing Funds if the Money Market Fund's Board determines that such sale would adversely affect its portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that the Funds, by participating in the proposed transactions, and AIM, by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

8. Rule 17d–1 permits the SEC to approve a joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the Funds will participate in the proposed transactions on the same basis and will be indistinguishable from any other shareholder account maintained by the same class of the Money Market Funds and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in rule 2830(b)(9) of the NASD's Conduct Rules) or if such shares are subject to any such fee, AIM will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fee incurred by the Investing Fund.

2. Prior to reliance on the order, an Investing Fund will hold a meeting of the Board for the purpose of voting on the advisory contract under section 15 of the Act. Before approving any advisory contract for an Investing Fund, the Board, including a majority of the Disinterested Directors, taking into account all relevant factors, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by AIM should be reduced to account for reduced services provided to the Fund by AIM as a result of the Uninvested Cash being invested in the Money Market Fund. In connection with this consideration, AIM will provide the Board with specific information regarding the approximate cost to AIM of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Fund. The minute books of the Investing Fund will record fully the Board's considerations in approving the advisory contract, including the consideration relating to fees referred to above.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Funds' aggregate investment in the Money Market Funds does not exceed 25 percent of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectuses and statements of additional information.

5. Each Investing Fund, each Money Market Fund, and any future fund that may rely on the order shall be advised or, provided AIM manages Cash Balances, subadvised by AIM, or a person controlling, controlled by, or under common control with AIM.

6. No Money Market Fund whose shares are acquired by an Investing Fund shall acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the Securities Lending Program, a majority of the Board, including a majority of the Disinterested Directors, will approve the Fund's participation in the Securities Lending Program. Such directors/trustees also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of the Fund.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12815 Filed 5–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23842; File No. 812–11450]

Anchor National Life Insurance Company; et al.; Notice of Application

May 14, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an order pursuant to Section 26(b) and Section 17(b) of the Investment Company Act of 1940 (''1940 Act'').

Summary of Application: Applicants seek an order approving the substitution of: (a) Shares of the Government and Quality Bond Portfolio (''Government and Quality Bond Portfolio'') of the Anchor Series Trust (the ''Trust'') for shares of the Fixed Income Portfolio (''Fixed Income Portfolio'') of the Trust; and (b) shares of the Strategic Multi-Asset Portfolio (''Strategic Multi-Asset Portfolio'') of the Trust for shares of the Foreign Securities Portfolio (''Foreign Securities Portfolio'') of the Trust, each held by Variable Annuity Account One of Anchor National Life Insurance Company, Variable Annuity Account One of First SunAmerica Life Insurance Company and Presidential Variable Account One, (collectively the ''Variable Accounts'') as underlying investment vehicles for certain variable annuity contracts (the ''Contract'') offered by the Variable Accounts (the ''Substitutions''). Applicants also seek an order exempting them from Section 17(a) of the 1940 Act to the extent necessary: (a) To permit certain in-kind transactions in connection with the Substitutions; and (b) as part of the Substitutions, to permit divisions of the Variable Accounts holding the same securities to be combined.

Applicants: Anchor National Life Insurance Company (''Anchor National''), First SunAmerica Life Insurance Company (''First SunAmerica''), Presidential Life Insurance Company (''Presidential'' together with Anchor National and First SunAmerica, the ''Life Companies''), Variable Annuity Account One of Anchor National (''AN Account''), Variable Annuity Account One of First SunAmerica (''FS Account''), Presidential Variable Account One (''Presidential Account''), and Anchor Series Trust.

Filing Date: The Application was filed on January 5, 1999, and amended on April 30, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on June 8, 1999, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who which to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants Anchor National, AN Account, First SunAmerica, FS Account, and Trust c/o Robert M. Zakem, Esq., SunAmerica Asset Management Corporation, The SunAmerica Center, 733 Third Avenue, New York, New York 10017–3204; and Applicant Presidential and Presidential Account, c/o Charles Snyder, Presidential Life Insurance Company, 69 Lydecker Street, Nyack, New York 10906. Copies to Joan E. Boros, Esq., Jorden Burt Boros Cicchetti Berenson & Johnson, 1025 Thomas Jefferson Street, N.W., East Lobby, Suite 400, Washington, D.C. 20007.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street N.W., Washington, DC 20549–0102 [tel. (202) 942–8090]

Applicants' Representations

1. Anchor National is a stock life insurance company organized under the insurance laws of the State of California in April 1965 and redomesticated under the laws of the state of Arizona on January 1, 1996. Anchor National is an indirect wholly-owned subsidiary of American International Group, Inc. (''AIG''). Anchor National is authorized to sell annuities and life insurance in the District of Columbia and all states except New York.

2. First SunAmerica is a stock life insurance company organized under the insurance laws of the state of New York on December 5, 1978. First SunAmerica is a wholly-owned subsidiary of AIG. First SunAmerica is authorized to sell annuities and life insurance business in the states of New York, New Mexico, and Nebraska.

3. Presidential is a stock life insurance company organized under the laws of the state of New York in 1965. Presidential is a wholly-owned subsidiary of Presidential Life Corporation, a publicly-owned holding company. Presidential offers life insurance and annuities and is admitted to do business in forty-eight states and the District of Columbia.

4. The Variable Accounts are segregated investment accounts registered under the 1940 Act as unit investment trusts. Each Variable Account is divided into divisions that correspond to the portfolios of the Trust. Each Variable Account is used to fund certain variable annuity contracts issued by the corresponding Life Company.

5. The Trust is a series type open-end management investment company, organized as a Massachusetts business trust on August 26, 1983. The Trust consists of eleven series (''Portfolios''). Shares of the Portfolios are currently available to the public only through the purchase of certain variable annuity contracts issued by the Life Companies. SunAmerica Asset Management Company (''SAAMCo'') acts as the Trust's investment adviser. Wellington Management Company, LLP serves as sub-adviser for all the Portfolios of the Trust. SAAMCo is under common control with and therefore affiliated with Anchor National and First SunAmerica. SAAMCo is not affiliated with Presidential.

6. The Life Companies have decided to discontinue offering divisions investing in the Fixed Income Portfolio and the Foreign Securities Portfolio (the ''Replaced Portfolios'') as investment options under the Contracts and substitute shares of the Government and Quality Bond Portfolio and the Strategic Multi-Asset Portfolio (the ''Substituted Portfolios'') because the Replaced Portfolio have not retained sufficient Contract owner interest and are dwindling in size. Moreover, the small size of the Replaced Portfolio makes it difficult to manage the assets so as to maximize performance.

7. The investment objective of the Fixed Income Portfolio is to obtain a high level of current income consistent with preservation of capital. The Government and Quality Bond Portfolio seeks relatively high current income, liquidity and security of principal. Both Portfolios invest primarily in fixed income securities. The primary differences are that the Government and Quality Bond Portfolio invests a higher percentage of its assets in government securities as compared to the Fixed Income Portfolio; the Government and Quality Bond Portfolio has higher credit rating requirements for its non-government fixed income portfolio securities, and the Fixed Income Portfolio may (but is not required to) invest up to 20% of its assets in convertible debt securities, warrants, non-investment grade debt securities and dividend paying marketable common stock. The Life Companies do not believe that any of these differences

are significant, partly because notwithstanding its somewhat more restrictive investment practices and guidelines, the Government and Quality Bond Portfolio generally has outperformed the Fixed income portfolio.

8. The Foreign Securities Portfolio has as its investment objective long-term capital appreciation through investment in a diversified portfolio of primarily equity securities issued by foreign companies and primarily denominated in foreign currencies. The investment objective of the Strategic Multi-Asset Portfolio is to achieve high long-term total investment return by actively allocating its assets among sub-portfolios consisting of a Global Core Equity Sub-Portfolio, a Global Core Bond Sub-Portfolio, a Capital Appreciation Sub-Portfolio and a Money Market Sub-Portfolio. Although the Strategic Multi-Asset Portfolio can invest in a wider range of asset classes than can the Foreign Securities Portfolio, the investment objectives of the two Portfolios are similar, and the Life Companies believe that the Strategic Multi Asset Portfolio is an appropriate replacement for the Foreign Securities Portfolio.

9. The Government and Quality Bond Portfolio has a lower expense ratio (.7%) than the Fixed Income Portfolio (1.0%). While the Foreign Securities Portfolio and the Strategic Multi-Asset Portfolio currently have equivalent expense ratios of 1.4%, the Life Companies believe the addition of assets resulting from the substitutions may reduce the expense ratio of the Strategic Multi-Asset Portfolio whereas the expense ratio of the Foreign Securities Portfolio has risen from 1.2% to 1.5% of average net assets since 1994.

10. As of June 30, 1998, total net assets of the Government and Quality Bond Portfolio were $272.1 million; $17.5 million for the Fixed Income Portfolios; $53.9 million for the Strategic Multi-Asset Portfolio and $35.5 million for the Foreign Securities Portfolio.

11. Total Returns for the Portfolios were as follows:

[In percent]

	1994	1995	1996	1997	1998
Fixed Income Portfolio	(3.2)	19.2	2.4	9.4	8.0
Government and Quality Bond Portfolio	(3.1)	19.4	2.9	9.5	9.2
Foreign Securities Portfolio	(3.2)	12.6	11.5	(1.0)	10.7
Strategic Multi-Asset Portfolio	(2.6)	22.8	14.8	14.3	15.2

12. The Life Companies have determined that the Substituted Portfolios are appropriate replacements for the Replaced Portfolios, because: (a) the Government and Quality Bond Portfolio has a similar investment objective to the Fixed Income Portfolio, invests in the same types of securities, *i.e.*, fixed income securities, and has generally better performance and lower expenses; and (b) the Strategic Multi-Asset Portfolio has a similar investment objective to the Foreign Securities Portfolio, generally invests a significant portion of its assets in foreign securities, has generally better performance, and has a similar expense ratio, which may decline as a result of the additional assets resulting from the Substitutions Accordingly, each Life Company proposes substituting (a) shares of the Government and Quality Bond Portfolio for shares of the Fixed Income Portfolio; and (b) shares of the Strategic Multi-Asset Portfolio for shares of the Foreign Securities Portfolio.

13. Each of the Life Companies will redeem for cash or in kind all of the shares of each Replaced Fund that it currently holds on behalf of its applicable Variable Account at the close of business on the date selected for the Substitutions. It is anticipated that the redemptions will be partly or wholly in-kind, and thus purchases of the applicable Substitute Portfolios will be paid for partly or wholly with portfolio securities.

14. Each Life Company, on behalf of its Variable Account, will simultaneously place a redemption request with each Replaced Portfolio and a purchase order with the corresponding Substituted Portfolio so that each purchase will be for the exact amount of the redemption proceeds. As a result, at all times, monies attributable to Contract owners (''Owners'') then invested in the Replaced Funds will remain fully invested and will result in no change in the amount of any Owner's contract value or investment in the applicable Variable Account.

15. The Trust will effect the redemptions-in-kind and the transfers of portfolio securities in a manner that is consistent with the investment objectives, policies and restrictions, and federal tax law and 1940 Act diversification requirements applicable to the Substituted Portfolio. The Life Companies each will take appropriate steps to assure that the portfolio securities selected for redemptions-in-kind are suitable investments for the Substituted Portfolios. In effecting the redemptions-in-kind and transfers, the Trust will comply with the requirements of Rule 17a–7 under the 1940 Act to the extent possible and the procedures established thereunder by the Board of Trustees of the Trust.

16. The full net asset value of the redeemed shares held by the Variable Accounts will be reflected in the Owners' accumulation unit or annuity unit values following the Substitution. The Life Companies will assume all transaction costs and expenses relating to the Substitutiuon, including any direct or indirect costs of liquidating the assets of the Replaced Portfolios, so that the full net asset value of redeemed shares of the Replaced Portfolios held by the Variable Accounts will be reflected in the Owners' accumulation unit or annuity unit values following the Substitution.

17. The Trust's investment adviser and subadviser have been fully advised of the terms of the Substitutions. Applicants anticipate that the investment adviser and subadviser, to the extent appropriate, will conduct the trading of portfolio securities in a manner that provides for the anticipated redemptions of shares held by the Variable Accounts.

18. As part of the Substitutions, each Life Company will combine the divisions invested in the Replaced Portfolios with the divisions that currently invest in the corresponding Substituted Portfolios.

19. Each Life Company will supplement the prospectus for its applicable Variable Account to reflect the proposed Substitutions. Within five days after the Substitutions, the Life Companies will send to their respective Owners written notice of the Substitutions (the ''Notice'') identifying the shares of the shares of the Replaced Portfolios which have been eliminated and the shares of the Substituted Portfolios which have been substituted.

Owners will already have received a copy of the Trust's current prospectus, which includes a description of the Substituted Portfolios.

20. Owners will be advised in the Notice that, for a period of thirty-one days from the mailing of the Notice, Owners may transfer all assets, as substituted, to any other available division without limitation or charge and without any such transfer counting as one of the limited number of transfers permitted in a contract year free of charge (the ''Free Transfer Period'').

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides, in pertinent part, that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The purpose of Section 26(b) is both to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with a substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants represent that the purposes, terms and conditions of the Substitutions are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses it is designed to prevent. Applicants submit that the Substitutions are an appropriate solution to the insufficient size of the Replaced Portfolios, which makes it difficult to achieve consistent investment performance and to reduce operating expenses. Applicants assert that the Substitutions will solve these problems in a manner that is in the Owners' best interests because: (a) the Government and Quality Bond has a similar investment objective to the Fixed Income Portfolio, invests in the same types of securities, *i.e.*, fixed income securities, and has generally better performance and lower expenses; and (b) the Strategic Multi-Asset Portfolio has a similar investment objective to the Foreign Securities Portfolio, invests a portion of its assets in foreign equity securities, has generally better performance, and has a similar expense ratio, which may decline as a result of the additional assets resulting from the Substitutions.

3. Applicants represent that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

(a) the Substitute Portfolios will continue to fulfill the Owners' objectives and risk expectations, because the Government and Quality Bond Portfolio has investment objectives, policies, and restrictions substantially similar to the objectives, policies and restrictions of the Fixed Income Portfolio and, of the Trust's Portfolios, the Strategic Multi-Asset Portfolio has investment objectives, policies and restrictions most similar to those of the Foreign Securities Portfolio;

(b) during the Free Transfer Period, an Owner may request that assets be reallocated to another division selected by the Owner, and Applicants represent that the Free Transfer Period provides sufficient time for Owners to consider their reinvestment options;

(c) the Substitution will, in all cases, be at the net asset value of the respective shares, without the imposition of any transfer or similar charge;

(d) the Life Companies have undertaken to assume the expenses, including, but not limited to, legal and accounting fees and any brokerage commissions, in connection with the Substitutions and are effecting the redemption of shares in a manner that attributes all transaction costs to the Life Companies;

(e) the Substitutions will in no way alter the contractual obligations of the Life Companies;

(f) the Substitutions in no way will alter the tax benefits to Owners; and

(g) the Substitutions are expected to confer certain economic benefits on Owners by virtue of the enhanced asset size and lower expenses, as stated above.

Applicants consent to be bound by the terms and conditions listed immediately above in this paragraph.

4. Applicants represent that they have determined that it is in the best interests of Owners to effect the Substitutions. Applicants have determined that the investment objective and related investments of the Government and Quality Bond Portfolio is substantially similar to those of the Fixed Income Portfolio, that the investment objectives and related investments of the Strategic Multi-Asset Portfolio, among all the Portfolios, are most similar to those of the Foreign Securities Portfolio, and that the proposed Substitutions are consistent with Commission precedent.

5. Applicants state that the Government and Quality Bond Portfolio has a lower expense ratio than the Fixed Income Portfolio. The expense ratio of the Foreign Securities Portfolio has risen from 1.2% to 1.5% of average net assets since 1994. While the Foreign Securities Portfolio and the Strategic Multi-Asset Portfolio currently have equivalent expense ratios, the Applicants believe the addition of assets resulting from the substitutions may reduce the expense ratio of the Strategic Multi-Asset Portfolio.

6. Applicants submit that the investment performance of the Substituted Portfolios are generally higher than the performance of the corresponding Replaced Portfolios. The total returns of the Government and Quality Bond Portfolio have been slightly higher than those of the Fixed Income Portfolio, while the total returns of the Strategic Multi-Asset Portfolio generally have been significantly higher than the total returns of the Foreign Securities Portfolio.

7. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company. Certain of the Substitutions will be effected partly or wholly in-kind. Moreover, after the Substitutions the Life Companies will combine their respective separate account divisions invested in the Replaced Portfolios with the divisions invested in the corresponding Substituted Portfolios. The combination may be deemed to involve the indirect purchase of shares of the Substituted Portfolios with portfolio securities of the corresponding Replaced Portfolios, and the indirect sale of securities of the Replaced Portfolios for shares of the Substituted Portfolios. Thus each Portfolio would be acting as principal, in the purchase and sale of securities to the other Portfolio, in contravention of Section 17(a). The Commission has taken the interpretive position that divisions of a registered separate account are to be treated as separate investment companies in connection with substitution transactions. The Life Companies are arguably transferring unit values between their separate account divisions. The transfer of unit values may involve purchase and sale transactions between divisions that are affiliated persons. The sale and

purchase transactions between divisions may come within the scope of Sections 17(a)(1) and 17(a)(2) of the 1940 Act, respectively. Therefore, the combination of divisions may require an exemption from Section 17(a) of the 1940 Act, pursuant to Section 17(b).

8. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by Section 17(a) upon application if evidence establishes that: (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve over-reaching on the part of any person concerned; (b) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act. Applicants represent that the terms of the proposed transactions, as described in the Application are: reasonable and fair, including the consideration to be paid and received; do not involve over-reaching; are consistent with the policies of the Portfolios; and are consistent with the general purposes of the 1940 Act.

9. Applicants represent that, for all the reasons stated above with regard to Section 26(b) of the 1940 Act, the Substitutions are reasonable and fair and do not involve overreaching on the part of any person. Applicants expect that existing and future Owners will benefit from the consolidation of assets in the Substituted Portfolios. Applicants state that the transactions effecting the Substitutions will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder. Moreover, Applicants state that the partial redemptions-in-kind of portfolio securities of certain of the Replaced Portfolios will be effected in conformity with Rule 17a–7 under the 1940 Act to the extent possible. Applicants submit that Owners' interests after the Substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. In each case, Applicants assert that the consideration to be received and paid is, therefore, reasonable and fair. Applicants each believe, based on their review of existing federal income tax laws and regulations and advice of counsel, that the Substitutions will not give rise to any taxable income for Owners.

10. Applicants submit that the investment objectives of each of the Substituted Portfolios are sufficiently similar to the investment objectives of the Replaced Portfolios that, in this regard, the Substitutions are consistent with Commission precedent pursuant to Section 17 of the 1940 Act. Also, the Substitutions are consistent with the general purposes of the 1940 Act, as enunciated in the Findings and Declaration of Policy in Section I of the 1940 Act. The proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent. Moreover, the proposed transactions will be effected in a manner consistent with the public interest and the protection of investors. Owners will be fully informed of the terms of the substitutions through prospectus supplements and the Notice, and will have an opportunity to reallocate investments prior to and following the Substitutions.

Conclusion

Applicants submit that, for the reasons summarized above, their requests meet the standards set out in Sections 17(b) and 26(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12816 Filed 5–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–11667]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Armor Holdings, Inc., Common Stock, $.01 Par Value)

May 14, 1999.

Armor Holdings, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on May 6, 1999, on the New York Stock Exchange, Inc. (''NYSE''). Trading of the Company's Security on the NYSE commenced at the opening of business on May 7, 1999.

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Amex, the Company considered, among other things, the direct and indirect costs and the division of the market which might result from listing the Security simultaneously on the Amex and the NYSE. The Amex has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

The Company's application relates solely to the withdrawal from listing of the Company's Security from the Amex and shall have no effect upon the continued listing of the Security on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before June 4, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–12814 Filed 5–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12242]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (CareMatrix Corporation, Common Stock, $.05 Par Value Per Share)

May 14, 1999.

CareMatrix Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the security specified above (''Security'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration on the Amex include the following:

The Security of the Company has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on April 23, 1999, has been designated for quotation on the Nasdaq Stock Market (''Nasdaq''). The Security commenced trading on the Nasdaq at the opening of business on April 23, 1999.

The Company has compiled with the rules of the Amex by filing the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Amex, the Company considered, among other things, the direct and indirect costs of operating in dual markets and the associated concerns resulting from a fractured trading market for its Security. The Amex has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Exchange.

The Company's application relates solely to the withdrawal from listing of the Company's Security on the Amex and shall have no effect upon the continued listing of the Security on the Nasdaq. By reason of Section 12(g) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before June 4, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–12813 Filed 5–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27025]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

May 14, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declarations(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the applications(s) and/or declaration(s) should submit their views in writing by **June 8, 1999,** to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered. and will receive a copy of any notice or order issued in the matter. After **June 8, 1999,** the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Interstate Energy Corporation, et al. (70–9323)

Interstate Energy Corporation (''IEC''), a registered public utility holding company, Alliant Energy Resources, Inc. (''Alliant''), a wholly owned subsidiary of IEC, and Heartland Properties, Inc. (''HPI''), a wholly owned subsidiary of Alliant (collectively, ''Applicants''), located at 222 West Washington Avenue, Madison, Wisconsin, 53703, have filed an application under section 9(c)(3) of the Act.

By order dated April 14, 1998 (''Merger Order'') [1] the Commission authorized IES Industries, Inc., IES Utilities, Inc., and Interstate Power Company to become subsidiaries of WPL Holdings, Inc. (''WPLH''). Upon consummation of the merger, WPLH was renamed IEC and IEC was required to register with the Commission under section 5 of the Act.

The Merger Order authorized, among other things, IEC to retain WPLH's housing interests. WPLH indirectly owned HPI; a subsidiary company, established to pursue community development and to qualify for Low Income Housing Tax Credits (''LIHTC'') under section 42 of the U.S. Internal Revenue Code (''Code'').[2] Through direct and indirect subsidiaries, HPI engaged in the development, ownership and sale of affordable multi-family housing properties, and provided asset management services in connection with those properties. The Commission permitted retention of WPLH's LIHTC properties, reasoning that they were acquired for tax purposes by an exempt holding company, the interests were limited and passive, and by nature, tax credits are self-liquidating. The Commission further found that ownership of WPLH's LIHTC properties by IEC did not appear to involve any potential detriments to investors or consumers nor would any demonstrable benefit be achieved by requiring divestiture of a business that was already winding down.

Applicants now seek authorization to invest up to $50 million from time to time for a period of five years to acquire additional LIHTC properties in the IEC service territory.[3]

LIHTC are available in the form of equal annual tax credits over a ten-year term payable over eleven years, with the first and last years prorated. Under

[1] Holding Company Act Release No. 26856.

[2] 26 U.S.C. sec. 42.

[3] IEC's service territory includes areas of Iowa, Minnesota, Illinois, and Wisconsin.

section 42 of the Code, no credit is allowed for any taxable year unless an agreement between the housing project owner and the applicable state housing credit agency (''Agreement'') is in effect as of the end of the taxable year. Additionally, section 42 of the Code requires that the Agreement prohibit any increase in gross rent for a period ending on the latter of (a) the date specified by the agency in the Agreement or (b) fifteen years after the date when the building is placed in service. Housing credit agencies in IEC's service territory, may, in their agreement with LIHTC property owners, prohibit any increase in gross rents on LIHTC property for up to thirty years.[4]

Through its subsidiaries, IEC will continue to own LIHTC properties and will continue to provide investment management services in connection with those properties. HPI will continue the oversight of the low-income properties (previously performed by Heartland Asset Management prior to its dissolution on December 31, 1998) consistent with the role of a passive investor. HPI will focus its investment management role on maintaining financial statistics for each property, ensuring compliance with LIHTC restrictions and conducting on-site inspections to review management operations. Applicants state that HPI would not serve as the developer of the properties, but would be a passive investor with due diligence oversight.

Applicants state that acquisition of new LIHTC properties would be accomplished through the acquisition of limited partnership units in limited partnerships that are organized specifically to invest in low-income, multi-family housing projects throughout the IEC service area (''Acquisition Procedure'').[5] The limited partnerships are designed to ensure that the properties qualify for LIHTC and remain in compliance under section 42 of the Code. Separate limited partnerships would be established for each qualifying housing development thereby insulating each investment property from any liabilities that may occur in the development of the other properties and facilitating compliance with section 42 of the Code. Prior to investment, each property would be approved by the Heartland Investment Committee. Applicants have identified five properties for investment that have already been awarded tax credits.[6]

Applicant propose to invest in approximately four to eight affordable housing limited partnerships per year, as a limited partner. It is stated that rural communities in the IEC service territory could support new construction of LIHTC properties averaging 40 units with a total development cost ranging from $2 million to $4 million. Half of the total development cost would be supported by community grants, long-term debt in the form of permanent mortgages, or other debt financing. The balance of the development cost would be funded by equity, which would range from approximately $1 million to $2 million per development. Applicants state that IEC's predominately rural service territory would benefit from these investments and there will be a corresponding increase in the demand for utility services. Further, obtaining tax credits would enable IEC to manage and lower its income tax expense.

Applicants state that limited partnership agreements (''Partnership Agreements'') for prospective investments have not been negotiated or executed, but, are typically negotiated with the third-party developer in the 30–60 days immediately preceding the time of the investment. Applicants represent that they would not be the general partner in the Partnership Agreements, but would only be a limited partner.[7]

Sierra Pacific Resources, et al. (70–451)

Sierra Pacific Resources (''Sierra Pacific''), 6100 Neil Road, Reno, Nevada 89511, a Nevada public utility holding company exempt from registration under section 3(a)(1) of the Act from all provisions of the Act except section 9(a)(2), and Nevada Power Company (''Nevada Power''), 6226 West Sahara Avenue, Las Vegas, Nevada 89146, an electric utility company (together, ''Applicants''), have filed an application under sections 9(a)(2) and 10 of the Act.

Sierra Pacific proposes to merge with Nevada Power, with Nevada Power to become a wholly owned subsidiary of Sierra Pacific (''Transaction''). The Applicants request an order under section 3(a)(1) of the Act granting Sierra Pacific an exemption from all provisions of the Act except section 9(a)(2) following consummation of the Transaction.

The merger will be carried out in a two-step process under the terms of an Agreement and Plan of Merger dated as of April 29, 1998 (''Merger Agreement''), among Sierra Pacific, Nevada Power, and two Nevada wholly owned special purpose subsidiary corporations of Sierra Pacific, Desert Merger Sub, Inc. (''Desert Merger Sub''), and Lake Merger Sub, Inc. (''Lake Merger Sub''). First, Lake Merger Sub will be merged into Sierra Pacific, with Sierra Pacific as the surviving corporation.[8] Then, Nevada Power will be merged into Desert Merger Sub, with Desert Merger Sub as the surviving corporation, after which Desert Merger Sub will change its name to Nevada Power Company. The purpose of this two-step process is to allow Nevada Power to become a first-tier subsidiary of Sierra Pacific without generating any adverse tax consequences for any of the parties.

Under the Merger Agreement, each share of pre-merger Sierra Pacific and Nevada Power common stock will be converted into the right to receive cash or post-merger Sierra Pacific common stock (''SP Common Stock''). Each owner of Sierra Pacific common stock prior to the first merger will be entitled to receive either 1.44 shares of SP Common Stock or $37.55 in cash in exchange for each share of Sierra Pacific common stock it owns. Each owner of Nevada Power common stock prior to the second merger will be entitled to receive either one share of SP Common Stock or $26.00 in cash in exchange for each share of Nevada Power common stock it owns. The cash consideration for Sierra Pacific common stock and Nevada Power common stock represents a five percent premium per share, respectively, based on the ten-day average share price of each company's common stock prior to the boards of directors of Sierra Pacific and Nevada Power approval of the Merger Agreement on April 29, 1998.

The Merger Agreement provides for special treatment of shareholders of less than 100 shares. Applicants state that Sierra Pacific will finance the approximately $460 million necessary to fund the cash consideration provided for under the Merger Agreement. The exact sources and precise methods of

[4] Applicants state that given the requirements of section 42 of the Code and the limitations imposed by state housing credit agencies on LIHTC properties, they may need to maintain investment interest in each LIHTC property for a period of up to thirty years.

[5] The Commission authorized the Acquisition Procedure in the Merger Order.

[6] No other specific properties have been identified for future investment because it is unknown which properties would be awarded tax credits through the annual competitive tax credit allocation process.

[7] The general partner would manage the day-to-day operations of each property including leasing activities, rent collection and property maintenance.

[8] This step is necessary because, as discussed below, each share of pre-merger Sierra Pacific common stock may be exchanged for $37.55 in cash or 1.44 shares of Sierra Pacific common stock. The exchange of pre-merger stock for cash or stock occurs as a result and at the time of this first merger.

financing this amount have yet to be determined.

The boards of directors of Sierra Pacific and Nevada Power approved the Transaction on April 29, 1998. A majority of both the Sierra Pacific and Nevada Power common shareholders approved the Transaction at separate meetings held on October 9, 1998.

Sierra Pacific owns all of the common stock of Sierra Pacific Power Company (''SPPC''), an electric and gas utility subsidiary company incorporated in Nevada. SPPC provides electric service to approximately 287,000 retail customers in northern Nevada and northern California. SPPC also sells electric power at wholesale. In addition, SPPC distributes natural gas at retail to approximately 101,000 customers in the Reno/Sparks area of northwestern Nevada. For the year ended December 31, 1997. SPPC's electric and gas operating revenues totaled $611 million, comprised of $540.3 million in electric business and $70.7 million in natural gas business.

SPPC is subject to the retail ratemaking jurisdiction of the Nevada Public Utilities Commission (''Nevada PUC'') with respect to its rates for retails sales of electricity and gas, and to the California Public Utilities Commission (''CPUC'') with respect to its rates for retail sales of electricity. Nevada Power is also subject to the jurisdiction of the Nevada PUC and the CPUC with respect to its terms of service, issuance of certain securities, siting of and necessity for generation and certain transmission facilities, accounting and other matters. In addition, SPPC is subject to regulation by the Federal Energy Regulatory Commission (''FERC'') under the Federal Power Act with respect to wholesale electricity sales, the terms and conditions for providing interstate electric transmission service, and other matters. SPPC is also subject to applicable federal and state environmental regulations.

Sierra Pacific is engaged in nonutility business through the following subsidiaries: Tuscarora Gas Pipeline Company (''Tuscarora''); Sierra Energy company d/b/a e-three (''e-three''); Lands of Sierra, Inc. (''LOS''); and Sierra Pacific Energy Company (''SPEC''). Tuscarora was formed to enter into a partnership with a subsidiary of TransCanada, a nonaffiliated Canadian natural gas transportation company, to develop, construct and operate a natural gas pipeline to serve Reno, northern Nevada and northeastern California. e-three provides energy related products and services both inside and outside SPPC's service territory. LOS develops and manages nonutility property in Nevada and California. SPEC is developing a customer information system for the energy industry, and provides certain products and services in Nevada through a partnership.

For the year ended December 13 1997, Sierra Pacific's operating revenues on a consolidated basis were approximately $663 million, of which approximately $52 million were attributable to nonutility activities. Consolidated assets of Sierra Pacific and its subsidiaries at December 31, 1997, were approximately $1.9 billion, of which approximately $1.4 billion consisted of net utility plant and equipment.

Nevada Power is a public utility company incorporated in Nevada, that provides retail electric service to more than 1.3 million customers predominately in Clark County, Nevada, with limited service provided to the Federal Department of Energy in Nye County, Nevada. Both Clark County and Nye County are located in southern Nevada. Nevada Power also sells electric power at wholesale.[9]

Nevada Power is subject to the retail ratemaking jurisdiction of the Nevada PUC for retail sales of electricity as well as terms of service, issuance of certain securities, siting of and necessity for generation and certain transmission facilities, and accounting and other matters. Nevada Power is also subject to regulation by FERC under the Federal Power Act with respect to wholesale electricity sales, the terms and conditions for providing interstate electric transmission service, and other matters. Nevada Power is also subject to applicable federal and state environmental regulations. Nevada Power is engaged in nonutility businesses through subsidiaries that do not generate any material revenue.[10]

For the year ended December 31, 1997, Nevada Power's utility operating revenues on a consolidated basis were approximately $799 million. Consolidated assets of Nevada Power and its subsidiaries at December 31, 1997, were approximately $2.3 billion, of which approximately $1.7 billion consisted of net electric plant and equipment.

Applicants state that the Transaction is expected to provide efficiencies and economies which will benefit the public, investors and consumers. Among other things, Applicants state that, following the Transaction, the combined company will have the ability to compete more effectively in unregulated markets and serve customers more cost-effectively in regulated markets. Applicants also note that they will be better positioned to take advantage of operating economies and efficiencies through, among other measures, joint development and marketing of competitive new products and services, provision of integrated energy solutions for wholesale and retail customers, joint management and optimization of their respective corporate functions, programs, retail services, customer support functions, and inventories and purchasing economies.

Applicants have requested an order under section 3(a)(1) granting Sierra Pacific, after consummation of the Transaction, an exemption from all sections of the Act except section 9(a)(2). In support of the request, Applicants contend that, after the Transaction, Sierra Pacific will remain predominately an intrastate (i.e., Nevada) holding company that will not derive any material part of its income from non-Nevada public utility operations.

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[9] Nevada Power currently has a total generating capacity of 1,964 MW of power. Applicants have committed to the Nevada PUC that upon consummation of the Transaction they will divest their generation assets. Applicants state that they expect to complete the divestiture in the year 2000 after they receive all of the necessary regulatory approvals, including FERC approval of rate schedules for the sale of power by the new owners of the divested generation units.

[10] These subsidiaries include: Commonsite, Inc, NVP Capital I and II, Nevada Electric Investment Company (''NEICO''), Northwind Las Vegas L.L.C. (''LV''), Northwind Aladdin, LLC (''Aladdin''), e-three CES, Genwal Coal Co., and Castle Valley Resources, Inc. Commonsite Inc. is a Nevada corporation which owns real estate occupied by Reid Gardner 4. a coal fired plant owned jointly by Nevada Power and the California Department of Water Resources. NVP Capital I and II are Delaware corporations that issue Quarterly Income Preferred Securities. NEICO is a subsidiary that has conducted energy-related activities. LV and Aladdin are joint ventures fifty percent and twenty-five percent owned, respectively, by NEICO with UTT Nevada, Inc., a nonaffiliate, owning the remaining percentages. LV now develops opportunities for district heating and cooling within Nevada. Aladdin will construct, own and operate district heating and cooling facilities at the Aladdin casino complex, currently under construction, e-three CES is a joint venture fifty percent owned by NEICO, with e-three, a wholly owned subsidiary of Sierra Pacific, owning the other fifty percent, e-three CES was formed to enter into performance contracts and similar energy-related services in southern Nevada. Genwal Coal Co., formerly involved in coal mining activities, whose assets were sold on January 1, 1995, and Castle Valley Resources, Inc., which was the sales arm of Genwal Coal Co., are both inactive.

Nevada Power also owns the following limited liability company subsidiaries which Nevada power states have not yet engaged in any business activities: Alkan Mining Company, a Nevada corporation wholly owned by NEICO; Nevada Power Services, LLC; Nevada Power Choices, LLC; Nevada Power Solutions, LLC; Las Vegas Energy LLC; Nevada Solutions, LLC, Power Choice, LLC; Nevada Power Energy Services, LLC; and Nevada Choices, LLC.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12932 Filed 5–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41392; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Approval of Request To Increase the Number of Securities Eligible for Trading Pursuant to the Reporting Plan for Nasdaq/'National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the Chicago Stock Exchange, Inc.

May 12, 1999.

I. Introduction

On November 6, 1998, the Chicago Stock Exchange, Inc. (''CHX''), submitted to the Securities and Exchange Commission (''Commission'' or ''SEC'') a request to increase the number of Nasdaq National Market (''Nasdaq/NM'') securities eligible for trading [1] pursuant to the Joint Transaction Reporting Plan for the National Market Securities Traded on an Exchange on an Unlisted or Listed Basis (''Plan'').[2] The Commission is approving the request to expand the number of eligible securities that may be traded by the CHX pursuant to the Plan from 500 to 1000.

II. Background

The Commission originally approved the Plan on June 26, 1990.[3] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to unlisted trading privileges.[4] The Commission originally approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. Accordingly, the pilot period commenced on July 12, 1993. The Plan has been in operation on a pilot basis since that time.[5]

III. Discussion

Prior to 1985, the Commission generally did not permit exchanges to extend unlisted trading privileges to non-exchange listed securities such as Nasdaq/NM securities. However, in 1985, the Commission began to permit exchanges, on a temporary basis and subject to certain limitations, to extend unlisted trading privileges to a maximum of twenty five securities. These limitations, to required the NASD and the exchanges to enter into a plan for consolidated transaction and quotation dissemination of the UTP securities.[6] In 1986, the Midwest Stock Exchange (now the CHX) entered into an interim plan which subsequently was superseded by the Plan, which is currently operating on a pilot basis. In 1990, the Commission expanded the maximum number of eligible securities to 100,[7] and in 1995, the Commission approved a request by the CHX[8] to further increase the number to 500.[9] Accordingly, CHX today trades up to 500 Nasdaq/NM securities pursuant to unlisted trading privileges.

The CHX would now like to raise the number of UTP-eligible securities from 500 to 1000. In commenting on the Commission's July 1998 Extension Order, the CHX asked the Commission to expand the number of Nasdaq stocks eligible for unlisted trading from 500 to 1000 issues.[10] In support of the proposal, the CHX cited to the Commission's approval of the previous increase. Further, the Exchange believes that investors directly benefit from the proposal because the CHX is the only auction-based market for Nasdaq securities. In the December 1998 Extension Order, the Commission solicited comment regarding the CHX's request.[11]

The Commission received two comment letters addressing the CHX's proposal, as well as two letters from the CHX responding to the NASD's letter.[12]

[1] Section 12(f) of the Securities Exchange Act of 1934 (''Act'') describes the circumstances under which an exchange may trade a security that is not listed on the exchange, *i.e.*, by extending unlisted trading privileges (''UTP'') to the security. *See* 15 U.S.C. 781(f). Section 12(f) required exchanges to apply to the Commission before extending UTP to any security. In order to approve an exchange UTP application for a registered security not listed on any exchange (''OTC/UTP''), Section 12(f) required the Commission to determine that various criteria had been met concerning fair and orderly markets, the protection of investors, and certain national market initiatives. Section 12(f) was amended on October 22, 1994; the amendment removed the application requirement. OTC/UTP is now allowed only pursuant to a Commission order or rule, which is to be issued or promulgated under essentially the same standards that previously applied to Commission review of UTP applications. The present order fulfills these Section 12(f) requirements.

[2] The signatories to the Plan, *i.e.*, the National Association of Securities Dealers, Inc. (''NASD''), the CHX (previously, the Midwest Stock Exchange, Inc.), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the Boston Stock Exchange, Inc. (''BSE''), are the ''Participants.'' The BSE, however, joined the Plan as a ''Limited Participant,'' and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as ''Nasdaq/NMS'') securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[3] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (''1990 Approval Order''). *See also* 1994 Extension Order, *infra* note 5 (providing a detailed discussion of the history of unlisted trading privileges in OTC securities, and the events that led to the plan and pilot program).

[4] *See* Section 12(f) of the Act. *See also* December 1998 Extension Order, *infra* note 5, for a more in depth description of the Plan.

[5] *See* Stock Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994) (''1994 Extension Order''), Securities Exchange Act Release No. 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); Securities Exchange Act Release No. 36368 (October 13, 1995) 60 FR 54091 (October 19, 1995); Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995); Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); Securities Exchange Act Release No. 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); Securities Exchange Act Release No. 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); Securities Exchange Act Release No. 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); Securities Exchange Act Release No. 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); Securities Exchange Act Release No. 38794 (June 30, 1997), 62 FR 36586 (July 8, 1997); Securities Exchange Act Release No. 39505 (December 31, 1997), 63 FR 1515 (January 9, 1998); Securities Exchange Act Release No. 40151 (July 1, 1998), 63 FR 36979 (July 8, 1998) (''July 1998 Extension Order''); and Securities Exchange Act Release No. 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999) (''December 1998 Extension Order'').

[6] *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640.

[7] *See* 1990 Approval Order, *supra* note 3.

[8] *See* letter from George T. Simon, Foley and Lardner, to Katherine England, Assistant Director, Commission, dated January 9, 1995.

[9] *See* Release No. 34-36102, *Supra* note 5.

[10] *See* letter from George T. Simon, Foley and Lardner, to Robert Colby, Commission, dated November 6, 1998. In response to a request by the Commission for additional information, the CHX submitted a second letter regarding its proposal. *See* letter from Patricia L. Levy, CHX, to Mariane H. Duffy, SEC, dated January 27, 1999. In this letter, the CHX represented that 485 Nasdaq stocks are currently assigned to its specialists and due to the 500 issue limit, it had to drop 18 Nasdaq stocks. Additionally, the Exchange represented its capacity to handle the increase to 1000 issues and, further noted that despite a recent increase in volume, excess capacity remains. The CHX also represented that it is in the process of expanding its capacity. *Id.*

[11] *See* December 1998 Extension Order, *supra* note 5.

[12] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, NASD, to Jonthan G. Katz, Secretary, Commission, dated February 12, 1999 (''NASD Letter''); letter from Gene L. Finn, Finn Associates, to Jonathan G. Katz, Secretary, Commission, dated February 11, 1999; letter from

Continued

The NASD states that it opposes the expansion to 1000 securities. First, the NASD notes that over-the counter market makers are not able to trade the most actively traded exchange listed securities and argues that it is still trying to obtain access to trading of non-19c–3 securities through the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES'') linkage.[13] Second, the NASD raised concerns regarding autoquoting.[14] The NASD argues that the proposal could create significant message traffic in the Nasdaq system, as well as needless and avoidable capacity repercussions for Nasdaq. Moreover, the NASD believes that the proposal is not consistent with the Act because it believes that the expansion would not serve to achieve the goals of unlisted trading privileges since ''data gathered by the NASD's Economic Research Department shows that a significant portion of the CHX specialist quotes are not competitive.''[15] The NASD asserts that: CHX specialists are almost never at the national best bid/best offer (''NBBO'') in the securities in which they make a market; CHX specialists account for a disproportionate number of quote updates; CHX specialists account for an insignificant portion of the volume in the securities in which they make a market; and CHX specialists have a disproportionately higher quote to trade ratio than Nasdaq market makers. For these reasons, the NASD concludes that permitting CHX specialists to trade an additional 500 securities might harm market quality. Finally, the NASD submitted statistical data regarding CHX and NASD volume in OTC/UTP securities, as well as quotation information concerning securities quoted under the Plan, to support its supposition to the proposal.

The CHX submitted a third letter responding to the NASD's comments.[16] In the third letter, the CHX provided statistical information to refute the position of the NASD. Further, the CHX addressed the NASD concerns regarding ITS/CAES, autoquote, and the goals of unlisted trading privileges. The CHX further noted that the Commission approved the previous expansion from 100 to 500 securities, notwithstanding similar comments from the NASD regarding ITS/CAES at that time. The CHX also challenged the validity of the NASD's capacity concerns resulting from the CHX member's use of autoquote.

The Commission does not find the NASD's arguments determinative and believes that it is appropriate at this time to expand the number of Nasdaq/NM securities that the CHX may trade under the Plan. As noted, the Commission has separately solicited comment on the issue of expanding the ITS/CAES linkage to non-19c–3 securities. Although CHX autoquoting substantially increases capacity burdens of Nasdaq, the Commission does not view these quotes as in themselves negative for the markets. Nor has the Commission received evidence that expanding the number of securities would otherwise have a negative effect on the markets or on the protection of investors. On the contrary, the Commission believes this expansion, from 500 to 1000 Nasdaq/MN securities has the potential to enhance competition and result in better executions for investors. The expansion should enhance the protection of investors and the public interest, further competition, increase the transparency of the markets, and is a prudent approach that will enable the Participants and the Commission to gain useful, instructive experience concerning operation of the Joint OTC/UTP Plan and its competitive effects, pending permanent approval of the Plan. In addition, the Commission notes that it will continue to monitor the CHX's ability to perform its responsibilities under the Joint Plan.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the proposed amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by June 11, 1999.

V. Conclusion

The Commission finds that it is consistent with Section 11A of the Act to increase the number of UTP-eligible Nasdaq/NM securities that the CHX may trade from 500 to 1000 securities.[17] In reviewing the proposal described herein, the Commission has considered the public trading activity in Nasdaq/NM securities, the character of the trading, the impact of the increase on the existing markets for the securities and the desirability of removing impediments to, and the progress that has been made towards, development of a national market system.[18] Specifically, the Commission believes that the expansion should increase transparency and serve to provide the Participants with additional information to evaluate the effects of the proposed course of action for the pilot program. This, in turn, should further the objectives of the Act in general, and specifically those set forth in Sections 12(f) and 11A of the Act and in Rule 11Aa3–1 and Rule 11Aa3–2 thereunder.

It is therefore ordered, Pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3–2 thereunder, that the CHX's request to expand the number securities eligible for trading pursuant to the Joint Transaction Reporting Pan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12817 Filed 5–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41391]

Notice of Intention To Cancel Registrations of Certain Transfer Agents

May 12, 1999.

Notice is given that the Securities and Exchange Commission (''Commission'')

Paticia L. Levy, Senior Vice President and General Counsel, CHX, to Jonathan G. Katz, Secretary, Commission, dated March 3, 1999 (''CHX Letter No. 3''); and letter from George T. Simon, Foley and Lardner, to Robert Colby, Deputy Director, Division of Market Regulation, Commission, dated April 1, 1999.

[13] *See* Securities Exchange Act Release No. 40260 (July 24, 1998), 63 FR 40748 (July 30, 1998) requesting comments on whether to extend the ITS/CAES linkage to non-19c–3 securities.

[14] *See* Autoquoting is the computerized updating of stock prices. The CHX allows its members to autoquote Plan securities. The NASD generally prohibits this conduct, in part to ensure adequate capacity. *See* NASD IM–4613.

[15] *See* NASD Letter, *supra* note 12.

[16] *See* Letter CHX Letter No. 3, *supra* note 12.

[17] The Commission has considered the proposal's impact on efficiency, competition and capital formation.

[18] 15 U.S.C. 781(f)(1)(E)(i) and (ii).

[19] 17 CFR 200.30–39a)(29).

intends to issue an order, pursuant to section 17A(c)(4)(B) of the Securities Exchange Act of 1934 (Exchange Act),[1] canceling the registrations of the transfer agents whose names appear in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Gregory J. Dumark, Staff Attorney, at 202/942–4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

Background

On August 12, 1998, the Commission adopted Rule 17Ad–18 under Sections 17(a) of the Exchange Act, which requires non-bank transfer agents to file Form TA–Y2K with the Commission.[2] Under Rule 17Ad–18, every transfer agent was required to complete and file by August 31, 1998, Part I of Form TA–Y2K reflecting its Year 2000 compliance effort as of July 15, 1998. Certain larger transfer agents were also required to complete Part II of Form TA–Y2K.

In August 1998, the Commission mailed copies of Form TA–Y2K to all non-bank transfer agents then registered with the Commission.[3] In September 1998, the Commission mailed letters to the transfer agents, including the transfer agents listed in the Appendix, that had not filed Form TA–Y2K warning them of the possibility of the institution of an administrative proceeding by the Commission. Subsequently, the Commission made additional efforts to locate and determine the status of transfer agents, including the transfer agents listed in the Appendix, that did not file Form TA–Y2K. In some cases the Commission was unable to locate the transfer agent and in other cases the Commission received notification that the transfer agent was no longer in existence or had ceased doing business.

To date, the 14 registered transfer agents listed in the Appendix have neither filed Form TA–Y2K nor responded to Commission inquiries. Based on the facts it has, the Commission believes that these transfer agents are no longer in existence or have ceased doing business as a transfer agent. Section 17A(c)(4)(B) of the Exchange Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall be order cancel that transfer agent's registration. Accordingly, at any time after June 21, 1999, the Commission intends to issue an order cancelling the registrations of any or all of the transfer agents listed in the Appendix.

Any transfer agent listed in the Appendix that believes its name has been included in the Appendix in error must notify the Commission in writing prior to June 21, 1999 objecting to the cancellation of its registration. Written notifications must be mailed to: Gregory J. Dumark, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001, or be sent via facsimile to (202) 942–9695, Attention: Gregory J. Dumark.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

Appendix—Registration Number and Name

84–1758, Corporate Strategic Services, Inc.

84–1997, DC Trading & Development Corp.

84–5406, First Federal Savings Bank Byran Texas

84–1945, Hawthorne Shareholder Services, Inc.

84–5553, The Herman Group, Inc.

84–5522, Keller Financial Services, Inc.

84–1766, Kinlaw Energy Partners Corp.

84–5615, NRG Incorporated

84–5560, Partnership Services, Inc.

84–0047, Penn Square Management Corporation

84–5412, Schuster, Jill Lauren

84–998, Silver Crescent, Inc.

84–5614, Wisconsin Real Estate Investment Trust

84–1566, Yreka United, Inc.

[FR Doc. 99–12933 Filed 5–20–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78q–1(c)(4)(B).

[2] Release No. 34–40163 (July 2, 1998), 63 FR 37688 (July 13, 1998) (''Adopting Release''). *See also* Release No. 34–39726 (March 5, 1998), 63 FR 12062 (March 12, 1998) (''Proposing Release''). Rule 17Ad–18 specifically applies to non-bank transfer agents. The term ''non-bank transfer agent'' means a transfer agent whose regulatory agency is the Commission and who also is not a savings association regulated by the Office of Thrift Supervision. 17 C.F.R. § 240.17Ad–18(e).

[3] The Commission mailed the Form TA–Y2K to the address provided by each non-bank transfer agent on their Form TA–1. These addresses should be current, as non-bank transfer agents are required to update Form TA–1 promptly for any address changes.

[4] 17 CFR 200.30–3(a)(22).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41415; International Series Release No. 1197; File No. SR–EMCC–98–10]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Netting Services

May 17, 1999.

On November 2, 1998, Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–EMCC–98–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 28, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Currently, EMCC processes its members' transactions on a trade for trade basis. The rule change enables EMCC to offer its members the ability to have their transactions processed on a netted basis through EMCC's netting services.

Under EMCC's netting services, transactions between two netting members that have been reported on EMCC's ''accepted trade report,'' which is made available to members no later than two days prior to settlement date (''SD–2''), will be eligible for settlement netting. The accepted trade report will indicate trades that are to be processed on a netted basis.

Both trade for transactions and netted transactions will be novated and guaranteed at the same time. Receive and deliver obligations for netting trades will be established when the accepted trade report is made available to members. On the scheduled settlement date, these receive and deliver obligations will be extinguished and replaced with new receive obligations or deliver obligations relating to the net position. In order to meet the delivery parameters of the applicable qualified securities depository (''QSD''), EMCC may establish one or more receive and deliver obligations with respect to any one net position.

The value at which receive and deliver obligations will be settled at a

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40810, International Series Release No. 1174 (December 18, 1998), 63 FR 71532.

QSD will be fixed by EMCC based on an average of the prices of all transactions in the ISIN [3] underlying such receive and deliver obligations. In order to compensate netting members for the difference between the value at which the netted receive and deliver obligations are settled and the actual consideration for the transactions underlying the receive and deliver obligations, EMCC will debit or credit members with the difference between the value at which such obligations settle and the actual consideration. This credit or debit will be referred to as the ''transaction adjustment payment.''

As described below, the rule change makes specific changes to EMCC's rules.

Rule 1—Definitions

The rule change adds definitions of ''netting member,'' ''netting services,'' and ''netting trade'' to Rule 1. The term ''netting member'' is defined as a member that is a participant in the netting services. The definition of ''netting trade'' sets forth the requirements that must be met in order for a trade to be eligible as a netting trade. Specifically, the trade must (a) be a compared trade between two netting members and (b) have been reported on an accepted trade report made available to members no later than SD–2. The definition also states that EMCC may treat any trade either by netting member or by ISIN as ineligible to be a netting trade. The rule change also amends the definition of ''final net settlement obligation'' to include any unpaid transaction adjustment payment.

The rule change makes technical corrections to the definitions of ''fail long position,'' ''fail short position,'' and ''net settlement obligation,'' all of which incorrectly refer to the ''settlement day'' rather than the ''scheduled settlement date.'' In addition, the rule change modifies the definition of ''contract value'' to state that this value is calculated by EMCC.

Rule 4—Clearing Fund, Margin, and Loss Allocation

The rule change amends Rule 4 with respect to the expiration date of the paragraph in Section 10 of Rule 4 that permits EMCC to use clearing fund deposits for intraday financing. The amendment postpones this expiration date to the earlier of (i) the first anniversary of the date on which EMCC commenced operation as a registered clearing agency [4] or (ii) the date on which all members are netting members (as opposed to the date on which netting services are available).

In addition, the rule change amends Section 5 of Rule 4 with respect to the use of the term ''value of position.'' The term is currently used with respect to the calculations of both the mark to market amount and volatility amount. However, the current definition applies only to the mark to market calculation. As a result, the rule change moves the current definition from the text of Section 5 to a footnote to the mark to market formula. In addition, the rule change adds a different definition of ''value of position'' as a footnote to the volatility amount formula.

Rule 6—Receipt of Data

The rule change amends Rule 6 to state that accepted trade reports will indicate whether a transaction is a netting trade or whether it will be settled on a trade for trade basis. EMCC members will receive a ''netting detail report'' from EMCC with respect to netting trades scheduled to settle on the following business day. The netting detail report will indicate a net settlement position for a given settlement date for each ISIN in which a netting member has a netting trade. The net settlement position will equal the net amount of EMCC eligible instruments in a particular ISIN that a netting member has purchased from or sold to all other netting members. The rule change also adds language to Rule 6 to indicate that cutoff times for submission of data to EMCC may be different for netting trades and trades to be settled on a trade for trade basis.

Rule 7—Novation and Guaranty of Obligations and Receive, Deliver and Settlement Obligations and Rule 8—Settlement Instructions Only Report

The rule change amends Section 1 of Rule 7 so that it applies to the guaranty and novation of all trades submitted to EMCC. Specifically, the rule change amends Section 2(a) Rule 7 so that it applies to the creation of a member's receive and deliver obligations. With respect to netting trades, on the scheduled settlement date the receive and deliver obligations that are established in accordance with Section 2(a) will be extinguished and replaced with one or more new receive and deliver obligations with respect to each net position. In addition, the rule change amends Section 2(c) of Rule 7 to state that receive and deliver obligations are to be settled at the settlement value set forth on the accepted trade report for trades to be settled on a trade for trade basis and as set forth on the netting detail report with respect to netting trades.

The rule change amends Section 3 of Rule 7 so that it applies to the transaction adjustment payment. In additional the rule change makes the following technical changes so that (i) all rules pertaining to receive, deliver, and settlement obligations appear under one rule, Rule 7, and (ii) Rule 8 pertains solely to EMCC's settlement instructions only report. Specifically, the rule change makes the following changes:

(1) ''Fail settlement positions'' is moved from Section 2 of Rule 8 to Section 12 of Rule 7;

(2) ''Partial deliveries'' is moved from Section 3 of Rule 8 to Section 13 of Rule 7;

(3) ''Financing costs/obligation to receive securities'' is moved from Section 4 of Rule 8 to Section 14 of Rule 7 (a pararaph is added to this section that will enable EMCC to charge interest to or fine a member for failure to make a transaction adjustment payment);

(4) ''Obligation to facilitate financing'' is moved from Section 5 of Rule 8 to Section 15 of Rule 7; and

(5) ''Relationship with qualified securities depository'' is moved from Section 6 of Rule 8 to rule 25.

Rule 25—Qualified Securities Depositories

The rule change adds a section to Rule 25 to prohibit a member from canceling or otherwise modifying instructions previously transmitted by EMCC to a QSD.

Addendum C—Statements of Policy With Respect to Additional Clearing Fund Deposits

The rule change amends Addendum C to refer to contract values rather than settlement values.

Addendum F—Fee Schedule

The rule change modifies the reference to trade date (T) in EMCC's fee schedule to Settlement Day (SD) so that the reference is consistent with the timetables contained elsewhere in EMCC's rules and because members may submit trades that were done on a forward basis so long as such trades are submitted to EMCC no earlier than SD–3.

[3] EMCC Rule 1 defines ISIN to mean the International Securities Identification Number as defined by International Organization for Standardization 6166.

[4] On February 13, 1998, the Commission granted EMCC temporary registration as a clearing agency until August 20, 1999. Securities Exchange Act Release No. 39661, International Series Release No. 117 (February 13, 1998), 63 FR 8711.

II. Discussion

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with EMCC's obligations under Section 17A(b)(3)(F) because it should reduce the number of settlement payments and the size of delivery obligations among EMCC netting members and therefore should increase the speed and accuracy of the settlement process with regard to those members. In addition, the Commission believes that the arrangements for EMCC's netting services have been designed so that they help EMCC to assure the safeguarding of securities and funds that are under EMCC's control or for which it is responsible.

III. Conslusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–98–10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12931 Filed 5–20–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78q–1(b)(3)(D).

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Policy Statement on the Use of Alternative Dispute Resolution and Case Selection Criteria for Alternative Dispute Resolution

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This notice publishes the Alternative Dispute Resolution Policy Statement of the U.S. Small Business Administration and sets forth criteria for identifying cases as potentially suitable for dispute resolution. SBA is publishing this notice to make clear its firm commitment to the greater use of alternative dispute resolution techniques. Nothing in this notice or these guidelines, however, creates any right or benefit by a party against the United States. No person or entity should construe this notice as requiring or suggesting that any employee act in a manner contrary to law.

ADDRESSES: Submit Comments to Eric S. Benderson, Associate General Counsel for Litigation, Office of General Counsel, U.S. Small Business Administration, 409 3rd St., SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Eric S. Benderson, (202) 205–6643.

Throughout the past decade, the litigation caseload, both in the courts and before administrative tribunals, which the Small Business Administration (''SBA'') and its participant lenders have carried has placed an increasing strain on SBA's resources, both in terms of personnel and expense. Other federal agencies have also faced this growing problem. To address these problems, the 101st Congress enacted the Administrative Dispute Resolution Act of 1990, Pub. L. 101–552, 104 Stat. 2736–37. This legislation with some modifications was permanently reenacted as the Administrative Dispute Act and Negotiated Rulemaking Act of 1996, Pub. L. 104–320, 110 Stat. 3870 (1996). This Act, as amended, codified at 5 U.S.C. 571 *et seq.*, authorizes federal agencies to use various dispute resolution techniques outside of litigation to resolve controversies related to administrative programs if the disputing parties agree to such a proceeding. 5 U.S.C. 572. Under the Act, a dispute resolution proceeding can include any process involving the disputants in which a neutral party participates. *See* 5 U.S.C. 571.

The National Performance Review, chaired by Vice President Gore, recommended in 1993 that all federal agencies establish methods for Alternative Dispute Resolution (''ADR'') and encourage the use of ADR when enforcing regulations. More recently, in 1996, President Clinton issued Executive Order 12988 dealing with Civil Justice Reform. This Order directed federal agencies to consider whether alternate methods might resolve a civil dispute both before suit is filed and again after litigation is instituted. The Order further authorized the Department of Justice to issue model guidelines for the use of ADR. The Justice Department published these guidelines at 61 FR. 36906 (July 15, 1996).

The SBA recognizes the inherent value of using various formal and informal dispute resolution techniques. ADR techniques may be appropriate to resolve a variety of disputes which regularly involve SBA. Several programmatic areas and activities at SBA afford fertile ground for the adoption of ADR techniques. These include proceedings before the Office of Hearings and Appeals, EEO proceedings, personnel actions, government contract disputes, and disputes with participating lenders and surety companies.

SBA routinely undertakes informal negotiations to settle delinquent loan accounts and other types of disputes before and after suit is initiated. At the same time, however, the Agency recognizes the need to do still more to promote the fair and efficient resolution of disputes arising in all areas of operations. Often, the use of ADR will be a more cost effective and efficient means of achieving a satisfactory resolution of a dispute than litigation or administrative procedures. To that end, SBA has adopted the guidelines outlined below.

The ADR Coordinator, the Associate General Counsel for Litigation, will work with program heads in implementing these ADR policies to develop specific procedures with respect to their particular programs to the greatest extent possible. This notice identifies factors which increase the value of ADR and other factors which diminish its benefit. The criteria below, however, are by no means exclusive, and are not intended to remove discretion from the employees of SBA. The determination of whether a particular case, claim or issue is appropriate for an ADR proceeding is often very fact specific. ADR will not be an appropriate means of resolving every dispute, but in this era of reduced resources, a commitment to the use of ADR procedures will allow SBA to maximize the resources devoted to dispute resolution.

Definitions

Alternative Dispute Resolution—An umbrella term that encompasses many different processes and procedures for dispute resolution. Those processes and procedures include, but are not limited to, arbitration, early neutral evaluation, facilitation, mediation, mini-trials and summary jury trials.

Arbitration—A non-judicial proceeding in which the disputants select a neutral person or panel of persons to act as arbiters of a dispute. The arbitrator hears evidence and, in many respects, acts like a judge. The

arbitrator's decision may be binding or non-binding, depending on the agreement of the parties. The use of binding arbitration by SBA must comply with the requirements of 5 U.S.C. 575.

Early Neutral Evaluation—A method of dispute resolution using a forum in which attorneys present the core of the dispute to a neutral evaluator in the presence of the parties. Disputants typically use this method after a lawsuit commences but before conducting discovery. The evaluator gives the parties a candid assessment of the strengths and weaknesses of their positions. If the parties do not reach a settlement, the evaluator helps the parties narrow the dispute and suggests guidelines for managing discovery.

Facilitation—A voluntary arrangement (or process) agreed to by disputants to seek more immediate resolution of the issues (conflict). This process is similar to counseling by agency employees of Equal Employment Opportunity complainants, but involves senior level agency managers as neutrals.

Mediation—A non-judicial process in which a neutral party facilitates an interest-based negotiation between the disputants, who then fashion their own resolution of the dispute. The resolution may be binding or non-binding, depending upon the agreement of the parties.

Mini-trial—A truncated form of litigation which assists in the structuring of a case for settlement. This procedure generally involves a non-binding information exchange conducted before one or more neutral parties who, in many cases, are experts in the field in controversy. There is no testimony from witnesses. Instead, each party's counsel is given an allotted period of time to state what the testimony would be and argue the legal consequences flowing from the facts. Those with settlement authority then meet to negotiate a resolution. If the parties fail to reach such a resolution, the neutral party or parties can render a decision. The decision may be binding or non-binding, depending upon the agreement of the parties.

Summary jury trial—This process is similar to a mini-trial, except that counsel presents the case to a jury instead of a neutral third party. A judge charges the jury as in ordinary litigation. After deliberation, the jurors return a non-binding ''advisory'' verdict. The parties then meet to resume settlement negotiations.

Guidelines for Reviewing Disputes for Resolution by ADR

SBA officials with delegated authority to resolve disputes within their program areas, other than the Office of Hearings and Appeals, in consultation with the Associate General Counsel, shall review each dispute which arises and determine whether, in light of the factors set forth below, use of ADR would be appropriate. These officials should consult with SBA counsel in determining whether to use ADR in a particular matter and which method of ADR to use.

If SBA determines that the matter is appropriate for ADR, an SBA official should send a letter to the opposing party or parties to determine their willingness to use ADR. If counsel represents the opposing party or parties, SBA counsel should prepare this letter and deal with opposing counsel in close consultation with program officials. If the other party or parties agree to use ADR, SBA and the other parties must enter a written agreement. This agreement, at a minimum, should include the following terms:

1. Agreement on the method of ADR and whether the procedure will be binding or non-binding (use of binding arbitration requires concurrence of AGC for litigation and must conform to the requirements for the Administrative Dispute Resolution Act. 5 U.S.C. 551, et. seq.);

2. Agreement on the potential neutrals likely available to resolve the dispute and how the final decision of which neutral to use will be made;

3. Agreement as to the allocation of the costs of ADR among the parties;

4. Agreement as to the time limits and scope of discovery;

5. Agreement on any necessary confidentiality provisions to govern the exchange of information in accordance with the Administrative Dispute Resolution Act and various privileges; and

6. Agreement on a tentative schedule for the resolution of the dispute through ADR.

When SBA officials determine that the use of ADR is inappropriate to resolve a particular case, issue or dispute, SBA officials should continue to review unresolved matters deemed inappropriate for ADR to determine if ADR would be beneficial at some subsequent time.

General Factors To Consider in Determining Whether a Matter Is Appropriate for ADR

In order to operate successfully, the chosen ADR technique must be specifically tailored to the particular dispute. Alternative Dispute Resolution is often appropriate in cases where litigation will produce an unsatisfactory result regardless of outcome or where litigation is too slow or cumbersome. Alternative Dispute Resolution also permits the parties to exercise more direct control over the dispute resolution remedy. ADR techniques have proven successful in many categories of cases where the cases are routine (not precedent setting), such as routine automobile torts, slip and fall, and employment rights cases, or where confidential communication with a neutral third party will help to clarify issues. Alternative Dispute Resolution techniques also allow the parties to craft individualized, nontraditional remedies. The following are some general suggestions to consider when determining whether to undertake ADR in a given case.

The criteria listed below are by no means exclusive, and are not intended to remove discretion from the employees of SBA. The determination of whether a particular case, claim or issue is appropriate for ADR is often very fact dependent.

Alternative Dispute Resolution is not meant to replace traditional negotiation in every case. Rather, it may serve to provide agency employees with additional tools to facilitate negotiation where traditional two-party negotiation has not produced an acceptable resolution or where the presence of a neutral may cause negotiations to proceed more efficiently.

The following, by way of example but not limitation, are factors you may consider when determining whether to use ADR and when determining which ADR technique will be most suitable in a given case: These factors are neutral in that whether they weigh in favor of or against the use of ADR depends upon the specific facts and circumstances of the case at issue.

1. Does the dispute indicate that the parties have an agenda separate and apart from the specific issues of the case?

2. What is the history of the dispute?

3. What is the anticipated outcome of the dispute, and is either party likely to appeal?

4. Have all the facts necessary to settle the case been discovered?

5. Has settlement authority been obtained or is more information needed to obtain settlement authority?

6. Who is in charge of handling the dispute for each of the parties?

7. Are there significant factual or legal disputes or do the parties generally

agree upon the most relevant facts or applicable legal precedent?

8. Is the opposing party an individual, a corporation or another governmental entity? How does that effect the ability of the opposing party to participate in the ADR process?

9. How credible are the witnesses for each party? How credible would such witnesses appear to a court? How would the credibility of the witnesses affect the outcome of the dispute?

10. Are there non-party individuals or entities with interests in the outcome of the dispute?

11. If applicable, what is the position of the case on the court's docket?

12. What are the likely expenses of litigation as opposed to the likely expenses of ADR?

13. Does the dispute involve policy implications?

14. What is the anticipated time-frame for resolving the dispute by means of litigation and by means of ADR?

Factors Counseling in Favor of ADR

A. Factors regarding the parties involved in the dispute:

1. There is now or is likely to be a continuing relationship between the parties.

2. There may be benefits to either party hearing directly from the opposing side.

3. Either party likely would be influenced by the opinion of a neutral third party.

4. The opposing party does not have a realistic view of the case.

5. The parties have indicated a desire to settle.

6. Either party needs a swift resolution of the dispute.

B. Factors regarding the nature of the case or dispute:

1. The facts of the dispute are complex or of a complicated technical nature not well-suited to litigation.

2. If the case proceeds to court, it is likely that SBA would face a hostile forum or decisionmaker.

3. The parties desire to maintain flexibility in the relief they seek.

4. Trial preparation will be difficult, costly and/or time-consuming, and these costs would outweigh any benefit which SBA is likely to receive if the matter proceeds to trial.

5. There is no need for a legal precedent in the matter.

6. There is a need to avoid an adverse legal precedent in the matter.

7. The Agency is a defendant and, if found liable, would face a great deal of legal exposure.

8. Serious questions exist as to whether SBA could actually recover significant sums in executing on a judgment.

9. There is a reasonable probability of an unfavorable determination of factual issues.

10. ADR could significantly narrow the issues in controversy even if it is unlikely to lead to a complete resolution of the matter.

Factors Counseling Against the Use of ADR

1. There is a need for precedent on the issue in dispute.

2. A need exists for a public proceeding to resolve the issue or case.

3. There is a need for a public sanction.

4. The matter is likely to settle soon without assistance.

5. The matter is likely to be resolved by motion in SBA's favor.

6. Either the opposing party or counsel representing the opposing party is not trustworthy.

7. A settlement would likely establish a precedent which would trigger additional claims and/or litigation.

8. An individual is sued in his or her personal capacity as a Government employee.

9. There is reason to believe that the opposing party is engaging in fraudulent or criminal activity or will not act in good faith.

10. One or more of the parties is unable to negotiate effectively, with or without the assistance of counsel.

11. Injunctive relief is sought and no compromise or other relief is available or acceptable.

12. The only relief sought is foreclosure on real property.

Factors To Be Considered in Deciding What Type of ADR Method(s) Should Be Used

When choosing an ADR method, SBA officials should consider how swiftly a particular method of ADR is likely to resolve the dispute. For example, proceedings under mediation or early neutral evaluation may take much less time than proceedings under other methods, such as arbitration.

A. Factors Favoring Mediation

1. There is a continuing relationship among the parties.

2. The disputed or key facts are not so technical as to require subject matter expertise.

3. There are multiple defendants and the United States has the greatest exposure.

4. There exists a risk of unfavorable precedent.

5. There is likely to be an excessive delay from the time a suit is filed until the time that recovery is actually achieved.

6. Either side is likely to benefit from hearing directly from the other party.

7. The opposing party needs to obtain a realistic view of the case.

8. The parties desire to maintain flexibility in the relief they seek.

B. Factors Favoring Early Neutral Case Evaluator/Expert

1. The parties know from the start that the case can be settled.

2. The parties disagree on the amount of damages.

3. Factual issues requiring expert testimony may be dispositive of liability or damage issues and the use of a neutral expert is cost effective.

4. A resolution of the factual issue(s) will assist in settlement.

5. One or more of the parties to the dispute needs to obtain a realistic view of the case, including a prediction of the likely outcome.

C. Factors Favoring Arbitration

1. The parties disagree on the amount of damages.

2. Arbitrators in the area are well-respected.

3. There are no complex factual issues involving areas of expertise and the parties disagree on the facts.

D. Factors Favoring Mini-Trials or Summary Jury Trials

1. There is likely to be an excessive delay from the time a suit is filed until the time there is any recovery.

2. Simple factual issues exist which while not necessarily requiring expert testimony would take an excessive amount of time to present in a traditional forum.

3. There are complex factual issues which are generally explained with expert testimony.

4. The attorneys can fairly summarize the facts to the fact-finder without the necessity of lengthy cross-examination.

Factors To Consider in Selecting ADR Providers

1. Does the provider meet the requirements of the relevant federal or state court rules for neutrals?

2. Is the ADR provider unbiased and not seeking to advance his or her own interests?

3. Will the ADR provider deal fairly with the parties and be reasonably available to the parties?

4. Does the ADR provider know any of the parties or counsel involved in the matter? If so, what is the nature and context of the provider's relationship with the parties or counsel and would this present a conflict of interest?

5. What kind and extent of training has the ADR provider received for the particular ADR process to be used?

6. Has the ADR provider received such training from a well-reputed program?

7. What kind of experience does the ADR provider have with the particular ADR process to be used in terms of the years of experience with the process, the number of disputes resolved, the amount in controversy and the complexity of the issues involved?

8. Is the ADR provider an attorney? If so, what kind of experience does the provider have in terms of type of practice, years of experience, complexity of cases and issues and litigation involving governmental entities?

9. Does the ADR provider have expertise in the issues or facts in controversy?

10. When the parties are paying for the services of an ADR provider, are the rates fair and reasonable for resolving a governmental dispute?

Training

SBA is committed to educating its personnel regarding the benefits and potential uses of ADR. To that end, SBA has begun ADR training. It expects to add ADR training to existing Agency training programs and to develop additional training devoted primarily to ADR. SBA also intends to work in partnership with other federal agencies to take full and efficient advantage of training which these agencies already have developed. SBA has already trained a number of its personnel throughout the United States to serve as mediators in disputes involving federal agencies. For example, the administrative judges in the Office of Hearings and Appeals have completed mediation training. SBA will explore additional training in this area.

Michael D. Schattman,

General Counsel.

[FR Doc. 99–12875 Filed 5–20–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3181]

State of Kansas; Amendment #1

In accordance with a notice received from the Federal Emergency Management Agency dated May 11, 1999, the above-numbered Declaration is hereby amended to include Reno and Sumner Counties in the State of Kansas as a disaster area as a result of damages caused by severe storms and tornadoes beginning on May 3, 1999 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Harper, McPherson, Pratt, Rice, and Stafford in the State of Kansas may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 2, 1999, and for economic injury the deadline is February 4, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 12, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–12876 Filed 5–20–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3174]

State of Missouri; Amendment #1

In accordance with notices received from the Federal Emergency Management Agency dated April 14 and May 5, 1999, the above-numbered Declaration is hereby amended to include Andrew, Iron, Macon, and Osage Counties in the State of Missouri as a disaster area as a result of damages caused by severe storms and flooding. This Declaration is further amended to establish the incident period for this disaster as beginning on April 3 and continuing through April 14, 1999.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Adair, Buchanan, Callaway, Chariton, Cole, Crawford, DeKalb, Dent, Gasconade, Gentry, Holt, Knox, Linn, Maries, Miller, Monroe, Montgomery, Nodaway, Randolph, Reynolds, Shelby, Sullivan, and Washington Counties in Missouri, and Doniphan County, Kansas.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 18, 1999, and for economic injury the deadline is January 20, 2000.

The economic injury number for Kansas is 9C8000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 12, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–12878 Filed 5–20–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3180]

State of Oklahoma; Amendment #1

In accordance with notices received from the Federal Emergency Management Agency dated May 7, 1999, the above-numbered Declaration is hereby amended to include damages caused by flooding in this disaster, in addition to damages resulting from severe storms and tornadoes. This Declaration is further amended to include Canadian, Craig, LeFlore, Ottowa, and Noble Counties in Oklahoma as a disaster area, and to establish the incident period for this disaster as beginning on May 3 and continuing through May 5, 1999.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Delaware, Grant, Haskell, Kay, Latimer, Mayes, McCurtain, Nowata, Pushmataha, and Sequoyah in Oklahoma; Cherokee and Labette Counties in Kansas; McDonald and Newton Counties in Missouri; and Polk, Scott, and Sebastian Counties in Arkansas.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 2, 1999, and for economic injury the deadline is February 4, 2000.

The economic injury numbers for Kansas, Missouri, and Arkansas are 9C8100, 9C8200, and 9C8300, respectively.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 12, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–12877 Filed 5–20–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of the Deputy Assistant Secretary for Energy, Sanctions, and Commodities

[Public Notice 3055]

Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Constructed and Maintained on the Border of the United States

AGENCY: Department of State.

SUMMARY: The Department of State has received an application from City of Sumas, Washington requesting a Presidential permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, authorizing City of Sumas to construct and maintain a pipeline to establish an intertie between the municipal water systems of the City of Sumas, Washington and the City of Abbotsford, British Columbia, Canada. The project consists of one 12-inch diameter pipeline of approximately 4,10021 feet in length crossing the International Boundary between the United States and Canada.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before June 13, 1999.

FOR FURTHER INFORMATION CONTACT: Matthew McManus, Division Chief, Energy Producer Country Affairs, Department of State, Washington, D.C. 20520, (202) 647–4557.

Matthew McManus,

Division Chief.

[FR Doc. 99–12891 Filed 5–20–99; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–161]

WTO Dispute Settlement Proceeding Regarding Korea—Measures Affecting Imports of Fresh, Chilled, and Frozen Beef

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice of the request by the United States for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade organization (''WTO''), to examine: (1) Korea's retail distribution system, which discriminates against beef from the United States by imposing sales and other requirements on such beef from which Korean beef is exempt; (2) Korea's imposition of charges that exceed the other duties or charges provided for in Korea's WTO Schedule of concessions; (3) Korea's provision of excessive domestic support to agricultural producers; and (4) other Korean Government measures that have disrupted market access and impaired the ability of U.S. producers to fill the quota allotted by the Korean government for beef imports. In this dispute, the United States alleges that the Korean measures are inconsistent with the obligations of Korea under the General Agreement on Tariffs and Trade (GATT) 1994, the Agreement on Agriculture, and the Agreement on Import Licensing Procedures. The USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted by July 15, 1999, to be assured of timely consideration by the USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 122, Attn: Korea Beef Dispute, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: James Lyons, Associate General Counsel, Office of the United States Trade Representative, (202) 395–7305 or Mary Latimer, Director for Korea, (202) 395–6813.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the USTR is providing notice that on April 15, 1999, the United States requested the establishment of a WTO dispute settlement panel to examine whether Korea's discriminatory retail distribution requirements for imported beef, an additional charge not provided for in Korea's Schedule of concessions, domestic support payments which exceed Korea's reduction commitments, and other restrictions on market access for imported beef are inconsistent with the WTO obligations of Korea. The WTO Dispute Settlement Body (''DSB'') considered the United States' first request for the establishment of a panel on April 28, 1999, and the United States will present its second request at a meeting of the DSB on May 26, 1999. A panel will be established at that time unless the DSB decides by consensus not to establish a panel.

Major Issues Raised by the EC and Legal Basis of the Complaint

The USTR believes that these measures are inconsistent with the obligations of Korea under several provisions of the WTO Agreements, including Articles II, III, X, XI, and XVII of the GATT 1994, Articles 3, 4, 6 and 7 of the Agreement on Agriculture, Articles 1 and 3 of the Agreement on Import Licensing Procedures.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies to Sandy McKinzy at the address provided above. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commentator. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by the USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting persons believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), the USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include a listing of any comments received by the USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the

submissions, or non-confidential summaries of submissions, to the panel received from other parties in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–161, Korea—Measures Affecting Imports of Fresh, Chilled, and Frozen Beef Dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 99–12906 Filed 5–20–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, Key West International Airport, Key West, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Monroe County, Florida under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On November 9, 1998, the FAA determined that the revised noise exposure maps submitted by Monroe County, Florida under part 150 were in compliance with applicable requirements. On May 7, 1999, the Administrator approved the Key West International Airport noise compatibility program. Six (6) of the eight (8) proposed program measures were fully approved. Two (2) measures were disapproved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Key West International Airport noise compatibility program is May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 29. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Key West International Airport, effective May 7, 1999. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the revised noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does no substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonable consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting others powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

Monroe County, Florida submitted to the FAA on October 26, 1998, updated noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from October 1, 1996 through October 25, 1998. The Key West International Airport revised noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 9, 1998. Notice of this determination was published in the **Federal Register**.

The Key West International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2003. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on November 9, 1998, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eight (8) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administration effective May 7, 1999.

Outright approval was granted for six (6) of the specific program measures. Two (2) measures were disapproved.

The approval action was for the following program controls:

Noise abatement measure	Description	NCP pages
	Operational Measures	
1. Conduct a Part 161 analysis of an access restriction prohibiting the operation of non-Stage 3 jet aircraft weighing less than 75,000 pounds at the airport.	An FAR part 161 analysis is recommended to further study an access restriction prohibiting the operation of non-State 3 private/corporate jet aircraft weighing less than 75,000 pounds maximum gross weight at Key West International Airport to reduce existing noncompatible land uses and impacted populations. The access restriction to be studied includes a transition program that would initially prohibit such aircraft operations between the hours of 9 p.m. and 7 a.m. Two years later, all such operations would be prohibited from operating at the airport. This access restriction is not being recommended as an operational noise abatement measure at this time. The access restriction is recommended for further study, a Part 161 analysis, and integration into a part 150 update. FAA Action: *Disapproved for purposes of part 150.* With full implementation of the land use measures in this NCP, the airport operator an accomplish 100 percent compatible land uses within the DNL 65dB contour. The proposal to perform a FAR part 161 study is not considered to be an eligible noise project under part 150 because it does not meet criteria described in FAA's policy statement issued in the FEDERAL REGISTER on September 16, 1996. More specifically, part 161 proposed study does not met Part 150 approval criteria of reducing noncompatible land uses beyond achievements gained by the nonrestrictive measures that are approved in this NCP. This disapproval of purposes of part 150 does not preclude the airport operator from pursuing a part 161 analysis outside the scope of the part 150 process.	Pgs. 6–5 to 6–7, 8–1 and 8–6; Tables 6.2 and 8.1; and supplemental information dated 02/09/99.
2. Conduct an FAR part 161 analysis to further study an access restriction prohibiting aircraft from operating at the airport between the hours of midnight and 6:00 a.m.	An FAR part 161 analysis is recommended to further study an access restriction prohibiting aircraft from operating at Key/West International Airport between the hours of midnight and 6 a.m. to reduce neighborhood disturbance during these hours. This access restriction is not being recommended as an operational noise abatement measure at this time. The access restriction is recommended for further study, a part 161 analysis, and integration into a part 150 update. FAA Action: *Disapproved for purposes of part 150.* With full implementation of the land use measures in this NCP, the airport operator can accomplish 100 percent compatible land uses within the DNL 65dB contour. The proposal to perform a FAR part 161 study is not considered to be an eligible noise project under part 150 because it does not meet criteria described in FAA's policy statement issued in the FEDERAL REGISTER on September 16, 1996. More specifically, the part 161 proposes study does not meet part 150 approval criteria of reducing noncompatible land uses beyond achievements gained by the nonrestrictive measures that are approved in this NCP. This disapproval for purposes of part 150 does not preclude the airport operator from pursuing a part 161 analysis outside the scope of the part 150 process.	Pgs. 6–10 to 6–12, 8–12 and 8–6; Tables 6.2 and 8.1; and supplemental information dated 02/09/99.
	Land Use Measures	
3. Provide Noise Insulation in Exchange for Aviation Easements.	A program for noise insulation of existing noncompatible structures is recommended for noncompatible single-family dwellings (and multi-family dwellings of four units or less) within the DNL 65+dB contour of the Year 2003 Future Condition Noise Exposure Map, With Program Implementation, in exchange for an avigation easement. Priority should be given first to homeowners located within the DM 70dB contour, and finally the homeowners located within the DNL 75 dB contour, then to homeowners located within the DNL 65 dB contour. The avigation easement will remain valid until noise levels exceed those projected for the year 2003 Future Condition Noise Exposure Map, Without Program Implementation. Eligible homeowners will be given the option of participating in either this program or the purchase program in Measure 4 below. If funding is not adequate to implement both programs simultaneously this program will be offered first. A program for noise insulation of noncompatible structures is also recommended for Key West High School. At the time when the high school is being renovated, measures to achieve a Noise Level Reduction (NRL) of 30 dB should be incorporated into the design and construction of all classrooms, libraries, offices, and other rooms for which nose insulation is specifically justified because of the substantial and disruptive effect of aircraft noise. FAA Action: *Approved.*	Pgs 7–10 to 7–13, 8–2, 8–3 and 8–6; Tables 7–2 ad 8–1; Figures 5.2, 6.3 and 8.1; Appendices A and B; and supplemental information dated 02/09/99.
4. Purchase Homes, Provide Noise Insulation, then Resell with Easements.	A program to purchase existing homes, provide noise insulation, then resell the homes with avigation easements is recommended for noncompatible single-family dwellings (and multi-family dwellings of four units or less) within the DNL 65+dB contour of the Year 2003 Future Condition Noise Exposure Map, With Program Implementation. Priority should be given first to homeowners located within the DNL 75 dB contour, then to homeowners located within the DNL 70 dB contour, and finally to homeowners located within the DNL 65 dB contour. The avigation easement will remain valid until noise levels exceed those projected for the year 2003 Future Condition Noise Exposure Map, Without Program Implementation. Eligible homeowners will be given the option of participating in either this program or the noise insulation program in Measure 3 above. If funding is not adequate to implement both programs simultaneously, Measure 3 will be offered first. FAA Action: *Approved.*	(Pgs. 7–8 to 7–10, 8–3, 8–4 and 8–6; Tables 7.2 and 8.1; Figures 5.2, 6.3 and 8.1; Appendices A and B; and supplemental information dated 02/09/99).

Noise abatement measure	Description	NCP pages
5. Update Noise Contours Annually.	In order to monitor compliance with the avigation easement noise level limit in measures 3 and 4 above, it is recommended that the County of Monroe update the Key West International Airport noise contours annually for comparison with the Year 2003 Future Condition Noise Exposure Map, Without Program Implementation. FAA Action: *Approved.*	Pgs 7–9, 7–10, 7–13, 8–4 and 8–6; Tables 7.2 and 8.1; and Figure 5.2.
6. Rezone Vacant Parcels.	It is recommended that the County of Monroe direct a written request to the City of Key West to rezone two vacant parcels to prevent noncompatible development. One parcel on the southwest corner of Flagler Avenue and 11th Street (Parcel ID # 65100.000000) would be rezoned from single family residential development (SF) to an airport noise compatible land use zoning such as limited commercial (LC). Another parcel on South Roosevelt Boulevard (Parcel ID # 65090.000100) would be rezoned from coastal low density residential (LDR–C) to an airport noise and public safety compatible land use zoning such as limited commercial (LC) Pgs 7–15, 7–16 and 8–4; Tables 7.2 and 8.1; and Figure 8.2.. FAA Action: *Approved.*	
7. Acquire Vacant Parcel.	It is recommended that the vacant parcel on the southwest corner of Flagler Avenue and 11th Street (Parcel ID #65100.000000) be acquired to prevent noncompatible development if the City of Key West does not rezone the parcel to an airport noise compatible land use zoning. FAA Action: *Approved under 14 CFR part 150 with respect to the described vacant land within the DNL 65 db contour where it can be demonstrated that the property is in imminent danger of being developed noncompatibly and local controls are insufficient to prevent that development.* Mitigation with respect to new noncompatible development that is allowed to occur on this property is outside the parameters of this part 150 approval. However, the FAA would encourage local government to exercise its prerogative to change the zoning to a compatible use prior to development.	Pgs 7–15, 7–16, 8-5 and 8–6; Tables 7.2 and 8.1; and Figure 8.2.
8. Establish Compatible Land Use Zoning.	Establishment of airport noise compatible land use zoning and public safety compatible land use zoning is recommended, as required by Florida Statutes Chapters 163 and 333. The County of Monroe will seek the cooperation of the City of Key West to establish airport noise compatible land use zoning and public safety compliance land use zoning. FAA Action: *Approved.*	Pgs 7–16 to 7–18 and 8–5; Tales 7.2 and 8.1; and Figure 8.3.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on May 7, 1999. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of Monroe County, Florida.

Issued in Orlando, Florida, on May 10, 1999.

John W. Reynolds, Jr.,

Assistant Manager, Orlando Airports District Office.

[FR Doc. 99–12952 Filed 5–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–99–5660]

Notice of Request for Reinstatement of an Expired Information Collection: Nationwide Personal Transportation Survey

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of FHWA to request the Office of Management and Budget (OMB) to reinstate its clearance of an expired information collection identified below under Supplementary Information. The Nationwide Personal Transportation Survey (NPTS) is conducted periodically on behalf of the Department of Transportation (DOT) to obtain information on the travel patterns of the American public and how travel is changing over time.

DATES: Comments must be submitted on or before July 20, 1999.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Liss, (202) 366–5060, Office of Highway Policy Information, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 9:15 a.m. to 5:45 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Nationwide Personal Transportation Survey (NPTS).

OMB Number: 2125–0545.

Background: Title 49, U.S.C. Sec. 301, authorizes the DOT to collect statistical information relevant to domestic transportation. Title 23, U.S.C. Sec. 307 authorizes the DOT to engage in studies to collect data for planning future highway programs. The data from this survey is used to analyze the amount and nature of personal travel on all modes by the American public. The information in the survey is used by FHWA and other DOT administrations to evaluate travel in terms of the mobility of various subgroups; the safety of vehicle drivers and passengers and pedestrians; the role of travel in economic productivity; and maintaining our mobility while protecting the human and natural environment. Many changes in travel and the related social patterns, such as the aging of the baby boomers, require that the DOT update the personal travel data on a periodic basis. Changes in household composition, the role of women, the

location of residences and workplaces, and unique travel issues of the elderly are reflected in changes in local and long-distance travel. In conducting the survey, the interviewers will use computer-assisted telephone interviewing (CATI) to reduce survey length and minimize recording errors. The FHWA and its survey contractors will ensure that personal identifying information is not included in the final data and that the survey results will be used for statistical purposes only. This survey will be coordinated with the American Travel Survey (ATS), conducted by the Bureau of Transportation Statistics, which collects data on longer trips of approximately 50 miles or more over a one-month period. The data collected in the NPTS and the ATS will allow transportation professionals at the Federal, state and metropolitan levels to make informed decisions about policies and plans.

Respondents: The household is the unit of observation, and approximately 25,000 households will complete the survey. Participation in the survey is voluntary. The survey households will be selected randomly by phone number. On the first call, certain basic information about the household is collected. During this initial contact, a specific date is assigned and travel diaries are sent for each household member to record a few items of information for every trip they take on that date. The day after the specified date, the second contact is made with the household to collect information recorded in their travel diaries. For children, an adult household member will be asked to report their travel. The household will be asked to provide the odometer reading of each household vehicle at the time of the interview. A third contact, about two months later, will be made to collect another odometer reading on each household vehicle.

Estimated Average Burden Per Response: The estimated burden per household averages 70 minutes, which includes interviewing an average of 2.6 persons per household. The burden per person averages 20 minutes for the interview and another 7 minutes for keeping the diary and writing the odometer readings.

Estimated Total Annual Burden: The estimated total annual burden hours is 29,250.

Frequency: The survey has been conducted by the DOT periodically since 1969. At the time of the most recent survey in 1995, it was decided that the survey would be conducted again in the year 2000. The NPTS 2000 will be conducted after June 2000 so as not to interfere with the scheduled Decennial Census.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Electronic Availability: An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the **Federal Register**'s WWW site at http://www.access.gpo.gov/su__docs.

Authority: 23 U.S.C. 307; 49 CFR 1.48.

Issued on: May 14, 1999.

Michael J. Vecchietti,

Director, Office of Information and Management Services.

[FR Doc. 99–12823 Filed 5–20–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33724]

CSX Transportation, Inc.—Trackage Rights Exemption—Consolidated Rail Corp.

Consolidated Rail Corporation (Conrail) has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT), over main line trackage of Conrail between the connection of the parties at Town Tower, Hagerstown, MD, at or near milepost CR–73.7 to the Conrail connection at CP Ship, at or near milepost CR–40.1, including necessary head and tail room, and thence to the connection point between the parties at Lurgan, PA, at or near milepost CR–42.2. These trackage rights include the right for CSXT to enter or exit the trackage at the connection of the parties at Chambers 5 Industrial Park, Chambersburg, PA, at or near milepost CR–53.0, including sufficient operating head room for CSXT trains to access the Industrial Park. The total distance of the trackage rights is 35.7 miles in Washington County, MD, and Franklin County, PA.[1]

The purpose of the trackage rights is to allow CSXT to reroute all traffic currently moving over its own line through downtown Chambersburg and, therefore, eliminate a number of at-grade crossings and improve safety in Chambersburg.[2] However, before these trackage rights can be implemented by CSXT, Conrail must make over $8 million in rail and signal improvements on its line that will allow for faster and more efficient operations. Accordingly, consummation will not occur until these improvements are made. The earliest the transaction could have been consummated was May 10, 1999, the effective date of the exemption (7 days after the exemption was filed.)

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33724, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each

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[1] The line in question will be allocated to Pennsylvania Lines, LLC, and operated by Norfolk Southern Railway Company (NSR) upon the division of Conrail's assets between CSXT and NSR pursuant to *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail, Inc. and Consolidated Rail Corporation,* STB Finance Docket No. 33388 (STB served July 23, 1998). Accordingly, NSR has participated in the negotiations for these trackage rights and has agreed to its terms.

[2] This proceeding is related to *CSX Transportation, Inc.—Abandonment Exemption—in Franklin County, PA,* STB Docket No. AB–55 (Sub-No. 568X) (STB served Mar. 9, 1999), in which the Board exempted under 49 U.S.C. 10502 from prior approval requirements of 49 U.S.C. 10903 the abandonment by CSXT of its rail line between 4th Street and Commerce Street in Chambersburg, subject to public use, trail use, and standard employee protective conditions. Subsequent to the March 9 decision, an offer of financial assistance was filed by Frederick A. Fox, Kaye A. Fox, Frederick Armstrong Fox and Karla M. Fox (the offerors). CSXT has agreed to sell the line between Main Street and South Street to the offerors once the trackage rights involved in this proceeding have been implemented. By decision served May 7, 1999, the acquisition was authorized.

pleading must be served on Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street (J150), Jacksonville, FL 32202.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 14, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–12872 Filed 5–20–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 574X)]

CSX Transportation, Inc.—Abandonment Exemption—in Harlan County, KY

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 1.05-mile line of its railroad between milepost OYC–250.40 at Evarts and milepost OYC–251.45 at Woods, in Harlan County, KY. The line traverses United States Postal Service Zip Code 40828.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 20, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 1, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 10, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202. If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 26, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by May 21, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 14, 1999.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–12782 Filed 5–20–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. BTS–99–5696]

Request for Reinstatement of an Expired Information Collection: American Travel Survey

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice and request for comments.

SUMMARY: The American Travel Survey (ATS) provides information on the travel patterns of the American public and how travel is changing over time. In accordance with the requirements of the Paperwork Reduction Act of 1995, BTS intends to request clearance from the Office of Management Budget (OMB) for this information collection.

DATES: Comments must be submitted by July 20, 1999.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Contrino, MacroSys Research and Technology for the Bureau of Transportation Statistics, phone: (202) 366–6584, fax: (202) 366–3640, *heather.contrino@bts.gov*, Office of Statistical Programs and Services, Bureau of Transportation Statistics, 400 7th Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Title: American Travel Survey (ATS).

OMB Number: 2139-New.

Needs and Uses: Under 49 U.S.C. 111, BTS is authorized to and responsible for collecting data related to the performance of the nation's transportation systems. The American Travel Survey provides data on the interregional flows of passenger travel.

Similar data is collected by the Travel Industry Association (TIA), however the information is proprietary, is focused on the travel and tourism industry, and excludes data on shorter distance trips. BTS and DOT will use the information to analyze the volumes and patterns of travel, the safety risks associated with travel, the role of travel in economic productivity, and the accessibility of transportation services. The data are also used in a number of ways by other Federal agencies, State and local governments, transportation-related associations, private businesses, and consumers to better understand the amount and nature of personal travel by the American public.

Because travel patterns change over time, BTS must update its information periodically. For instance, the aging of the baby boomers, changes in household composition, and changes in the roles of women will likely affect long-distance travel patterns. Therefore, BTS plans to conduct this survey every five years. The first was conducted in 1995 by the U.S. Census Bureau under a contract with BTS and was approved under OMB number 0607–0792.

This survey will be coordinated with the Nationwide Personal Travel Survey (NPTS) conducted by DOT's Federal Highway Administration. The NPTS collects detailed data on all trips, but since it includes a one-day travel period its focus is on daily local travel. In contrast, the focus of the ATS is on longer distance travel with an expected travel period ranging from four to six weeks. Together, the surveys will provide a comprehensive picture of travel, allowing transportation professionals to make more informed decisions.

In conducting the survey, the interviewers would use computer-assisted telephone interviewing (CATI) to reduce survey length and minimize recording errors. The information obtained from households will only be used for statistical purposes and will not be disclosed or used in identifiable form for any other purposes.

Respondents: Approximately 26,000 households, selected randomly by phone number, will complete the survey. Their participation is voluntary. On the first call, BTS will collect basic information about the household. The household will be given a specific reporting period and household members will receive calendars and instructions. Each household member will be asked to record all trips over 50 miles taken during the reporting period. The day after the end of the reporting period, BTS will contact the household to collect information on their trips made over the past two to six weeks. For children, an adult household member will be asked to report their travel. In the pretest, 2,000 households will be interviewed and appropriate reporting periods and improved methods for reducing burden will be evaluated. A total of two interviews will take place in both the pretest and the full survey. In the first interview (household interview), information about the household will be obtained from one member of the household. In the second interview (trip retrieval interview), information on trips taken during the reporting period will be obtained from all household members.

Estimated Average Burden per Response: The estimated average time per person to complete the household interview is 9 minutes per household and it is estimated that the burden for the trip retrieval interview is 8 minutes per person. One member of each household will participate in both interviews for a total of 17 minutes. The remaining household members will participate in the trip retrieval interview of 8 minutes per person.

Estimated Total Annual Burden: Including screener attempts, partially completed interviews, and trip recording burden, the estimated total burden for the pretest is 2,516 hours, 32, 712 hours for the full survey, and 1,640 hours for the non-response follow up survey. This assumes an average of 2.6 persons per household and equates to a total annual burden of 36,868 hours.

Public Comments Invited: BTS requests comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the Bureau of Transportation Statistics; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and included in the request for OMB's clearance of this information collection.

Electronic Availability: An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the Federal Register's web site at http://www.access.gpo.gov/su__docs.

Susan Lapham,

Acting Associate Director for Statistical Programs and Services

[FR Doc. 99–12822 Filed 5–20–99; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–8: OTS No. 3862]

Florida Parishes Bank, Hammond, LA; Approval of Conversion Application

Notice is hereby given that on May 13, 1999, the Director, Office of Examination and Supervision, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Florida Parishes Bank, Hammond, Louisiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: May 18, 1999.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 99–12946 Filed 5–20–99; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register
Vol. 64, No. 98
Friday, May 21, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 990416098–9098–01]

RIN 0694–AB67

Implementation of the Chemical Weapons Convention; Revisions to the Export Administration Regulations

Correction

In rule document 99–12281, beginning on page 27138 in the issue of Tuesday, May 18, 1999, make the following corrections:

1. On page 27148, in the first column, under the heading **License Exceptions**, in the paragraph designated *Related Controls:*, the fourth and fifth lines, beginning ''a.7.'' and ''a.8.'' respectively, should be removed from column one and inserted into column two, under the paragraph designation *Items:*, after the eighth line.

2. On page 27150, in the table, in the first entry, in the first and third lines, ''SW'' should read ''CW''; and in the second line, ''§ 472.18'' should read ''§ 742.18''.

[FR Doc. C9–12281 Filed 5–20–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Semiannual Agenda of Federal Regulatory and Deregulatory Actions

Unified Agenda document 99–7567, pages 21196–21301, in the issue of April 26, 1999, is corrected by issuing a separately published supplement distributed with the May 21, 1999 issue of the **Federal Register.** The supplement corrects, republishes and replaces in full pages 21196–21301, which were originally published as part VIII of the April 26, 1999 issue of the **Federal Register.**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 92F-0285]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 99–12394, beginning on page 26842, in the issue of Tuesday, May 18, 1999, make the following correction:

On page 26843, in the first column, under the heading, **SUPPLEMENTARY INFORMATION**, in the fifth line ''FMY'' should read ''FAP''.

[FR Doc. C9–12394 Filed 5-20-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-SW-11-AD; Amendment 39-11113; AD 99-08-07]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Helicopter Systems (MDHS) Model 369E, 369FF, 500N, and 600N Helicopters

Correction

Document 99-8408 was inadvertently published in the Proposed Rules section of Tuesday, April 6, 1999, beginning on page 16656. It should have appeared in the Rules and Regulations section.

[FR Doc. 99-8408 Filed 5-20-99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday
May 21, 1999

Part II

Department of Justice

Immigration and Naturalization Service

8 CFR Part 103, et al.

Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries; Final Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 208, 240, 246, 274a, 299

[INS No. 1915–98; AG Order No. 2224–99]

RIN 1115–AF14

Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries

AGENCY: Immigration and Naturalization Service and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA). It amends the Department of Justice (Department) regulations by offering certain beneficiaries of section 203 of NACARA who currently have asylum applications pending with the Immigration and Naturalization Service (Service), and their qualified dependents, the option of applying to the Service for suspension of deportation or cancellation of removal under the statutory requirements set forth in NACARA (''special rule cancellation of removal'').

Described in very general terms, both suspension of deportation and special rule cancellation of removal are forms of discretionary relief that, if granted, permit an individual subject to deportation or removal to remain in the United States as a lawful permanent resident alien. Integrating the processing of certain applications under NACARA into the Service's Asylum Program will provide an efficient process for considering the suspension of deportation and special rule cancellation of removal applications of most of the approximately 240,000 registered class members of the *American Baptist Churches* v. *Thornburgh* (*ABC*) litigation and certain other beneficiaries of NACARA who have asylum applications pending with the Service, as well as their qualified family members. The Immigration Court will retain exclusive jurisdiction over most suspension of deportation and special rule cancellation of removal applications submitted by NACARA beneficiaries who have been placed in deportation or removal proceedings.

This rule also codifies the relevant factors and standards for extreme hardship identified within existing case law, incorporates additional extreme hardship factors relevant to battered spouses and children, creates a rebuttable presumption of extreme hardship for NACARA-eligible *ABC* class members who submit completed applications, sets forth relevant eligibility criteria, creates procedures for adjudicating suspension of deportation and special rule cancellation of removal cases before the Service, and provides for the referral of certain cases to the Immigration Court.

DATES: *Effective date:* This interim rule is effective June 21, 1999.

Comment date: Written comments must be submitted on or before July 20, 1999.

ADDRESSES: Please submit written comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1915–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service:* Joanna Ruppel, International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, ULLICO Bldg., third floor, Washington, DC 20536, telephone number (202) 305–2663. *For matters relating to the Executive Office for Immigration Review:* Chuck Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041, telephone number (703) 305–0470.

SUPPLEMENTARY INFORMATION:

I. Background

What Is Section 203 of the Nicaraguan Adjustment and Central American Relief Act?

Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as title II of Pub. L. 105–100 (111 Stat. 2160, 2193) (as amended by the Technical Corrections to the Nicaraguan Adjustment and Central American Relief Act, Pub. L. 105–139 (111 Stat. 2644)), permits certain Guatemalans, Salvadorans, and nationals of former Soviet bloc countries to apply for suspension of deportation or cancellation of removal under special provisions set forth in that section.

How Did the Service Propose To Implement Provisions of Section 203 of NACARA?

On November 24, 1998, the Department of Justice published a proposed rule to implement certain aspects of section 203 of NACARA in the **Federal Register** at 63 FR 64895. The proposed rule would grant asylum officers jurisdiction to adjudicate certain NACARA cases, create a new NACARA application form, and outline the eligibility criteria for obtaining relief, as well as the process for submitting an application to the Service and processing procedures. The proposed rule would also codify the factors from relevant case law generally considered in evaluating extreme hardship claims. Comments were requested from the public by January 25, 1999.

In response to the proposed rule, the Department received over 400 comments from a wide range of community organizations, legal service providers, advocacy groups, members of Congress, the private bar, and individuals. The comments offered suggestions for revising and streamlining the adjudication and application process, providing alternative legal interpretations for certain eligibility issues, and advocating various policy interpretations with regard to implementation of section 203 of NACARA. The vast majority of comments, however, urged the Department to create a mandatory finding of extreme hardship for NACARA beneficiaries, particularly for those *ABC* class members who are eligible for relief under section 203 of NACARA.

Why Is the Service Issuing an Interim Rule With Requests for Comments?

The Department has reviewed all the comments submitted in response to its proposed rule carefully and, in deciding which comments to incorporate, has kept in mind the ameliorative purposes of NACARA. Many suggestions from the public have been incorporated, particularly with regard to streamlining the application form and clarifying certain aspects of the application and adjudication process. With respect to alternative legal interpretations of eligibility requirements and other substantive matters, the Department has made those changes that comport with the Immigration and Nationality Act (the Act) and NACARA.

Some of the substantive legal recommendations, however, exceed the scope of the law and could not be included in the interim rule. This is particularly true with regard to the

resolution of the extreme hardship issue. As will be explained in greater detail, the Department has determined that it would be inconsistent with both the Act and NACARA to adopt a conclusive finding of extreme hardship for all NACARA applicants, as well as for the more limited group of *ABC* class members. The Department has determined, however, that a more limited approach is most consistent with the requirement that suspension of deportation and cancellation of removal cases be adjudicated on a case-by-case basis. This rule, therefore, creates a rebuttable presumption of extreme hardship for those *ABC* class members who are eligible to apply for relief under section 203 of NACARA. The presumption will not apply to nationals from the former Soviet bloc countries or any NACARA dependents.

Because the adoption of a rebuttable presumption represents a significant shift from the proposed rule, the Department has determined that an additional comment period is needed. However, due to the substantial number of aliens eligible to apply for relief under section 203 of NACARA, the Department finds that there is good cause to avoid further delay in allowing applications by issuing this regulation as an interim rule. 5 U.S.C. 553.

How Are the Comments to the Proposed Rule Addressed in This Interim Rule?

Given the large number of comments and the variety of issues addressed, the discussion of the comments is divided into the general categories of jurisdiction, initial and substantive eligibility requirements, application procedures, adjudication procedures, and revisions to the form that will generally be used to request relief under section 203 of NACARA, Form I–881, ''Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100 (NACARA)).'' Within each category, the discussion contains a brief summary of relevant comments, the Department's responses, and the changes made to the rule or form.

Additionally, this interim rule at 8 CFR part 246 gives asylum office directors the same authority currently accorded district directors to rescind adjustment of status granted to an individual by an asylum officer in cases in which the individual is later found to have been ineligible for adjustment of status. This interim rule also outlines certain conditions and consequences of filing an application for NACARA relief at 8 CFR 240.63(d).

II. Discussion of Comments

Jurisdiction

Jurisdiction Over NACARA Applications

Several commenters requested that the Service be given initial jurisdiction over all applications for suspension of deportation and special rule cancellation of removal under NACARA. One comment stated that the Service should have jurisdiction over applications of individuals whose asylum applications were adjudicated under the terms of the *ABC* settlement agreement while NACARA was under legislative consideration, but before it passed, and also over individuals who have no mechanism for applying with the Service, such as those who registered for Temporary Protected Status (TPS), but never applied for asylum.

The Department will not change the jurisdictional scheme initially proposed, as it is the best way for ensuring timely resolution of NACARA applications. As explained in greater detail in the supplementary information published with the proposed rule, administrative efficiency is and has always been the Department's primary consideration in delineating jurisdiction. 63 FR 64895 (November 24, 1998). Distributing the NACARA caseload between the Executive Office for Immigration Review (EOIR) and the Service's Asylum Program increases the Department's ability to resolve cases quickly, because, in the vast majority of cases, a NACARA application will be heard by the agency that also has jurisdiction over an applicant's pending asylum application. For those persons with asylum claims currently pending before the Service, the rule permits concurrent adjudication of the asylum and NACARA applications. If an applicant is granted either asylum or NACARA relief, it will be unnecessary to refer his or her case to the Immigration Court. It would be administratively inefficient to transfer the cases of individuals currently in immigration proceedings, including *ABC* class members whose asylum applications have already been given a *de novo* adjudication by the Service, back to the Service solely for a NACARA adjudication and would delay the resolution of their cases.

The interim rule does include two exceptions to the general rule that individuals in proceedings before the Immigration Court may apply for relief under section 203 of NACARA only before the Immigration Court. The first exception covers those registered *ABC* class members whose proceedings before the Immigration Court or the Board of Immigration Appeals (Board) were administratively closed or continued, including those class members with final orders of deportation or removal who have filed and been granted NACARA motions to reopen under 8 CFR 3.43. An individual in this category is eligible to file a NACARA application with the Service if the individual is eligible for the benefits of the *ABC* settlement agreement, has not already had a *de novo* adjudication of the asylum claim by the Service pursuant to the agreement, and has not moved for and been granted a motion to recalendar proceedings before the Immigration Court or the Board to request suspension of deportation.

Under the second exception, a qualified family member of an individual who has a section 203 NACARA application pending with the Service, or who has been granted relief under that provision, may move to close the proceedings before the Immigration Court in order to apply with the Service. Administrative efficiency will likely be enhanced where family members have similar claims and there are strong policy reasons based on family unity to make this exception to the general jurisdiction rule.

The Department also declines to adopt the proposal that the Service be given jurisdiction over applications of individuals who have neither applied for asylum with the Service nor have been placed in immigration proceedings before the Immigration Court. The Department is concerned that such an expansion of the Service's jurisdiction would result in a large number of fraudulent applications being filed solely for the purposes of obtaining employment authorization, and thereby expose the Asylum Program to a recurrence of the same problems that necessitated asylum reform in 1995.

Concerns regarding fraud arise because an applicant for suspension of deportation or special rule cancellation of removal will be entitled to apply immediately for and be granted employment authorization. The determination of eligibility for employment authorization will necessarily be made by Service Center personnel based solely on a written application. However, an asylum office must accurately verify whether an individual is an *ABC* class member and registered for *ABC* benefits. Verification of *ABC* class membership and registration is a time consuming process that, because of limitations in the registration databases, often cannot be done without interviewing the individual. If the affirmative process is

not limited as set forth in the proposed rule, an individual who is not an *ABC* class member, or who is an unregistered class member, could easily submit a fraudulent application for relief under section 203 of NACARA and be granted employment authorization.

Restricting the availability of the affirmative NACARA process to certain categories of NACARA beneficiaries who have pending asylum applications with the Service and those who have a qualified relative whose asylum application has been adjudicated by the Service or is pending with the Service ensures that the Service has an existing record of the applicant or the applicant's qualified relative before he or she is able to apply for affirmative relief under section 203 of NACARA. This restriction minimizes the Asylum Program's vulnerability to fraud and avoids diverting resources from the adjudication process in order to verify the status of each new applicant claiming to be a registered *ABC* class member. This allows the Service to focus on resolving the status of the approximately 240,000 registered *ABC* class members who have asylum applications pending with the Service and their qualified relatives.

Process for Placing NACARA Beneficiaries Ineligible to Apply With the Service Into Removal Proceedings

One commenter requested that the regulations provide a mechanism for those who are not eligible to apply with the Service to receive charging documents placing them in removal proceedings where they may apply for special rule cancellation of removal before the Immigration Court.

The Department recognizes that registered *ABC* class members who never applied for asylum and who have not been placed in immigration proceedings are unable to apply for special rule cancellation of removal unless the Service places them in removal proceedings by issuing charging documents. An individual may request that the district office with jurisdiction place him or her in proceedings, but the Service retains prosecutorial discretion to determine the priority status of such a request. The Department is considering the possibility of having the asylum offices issue charging documents to registered *ABC* class members who request to be placed into proceedings and who provide sufficient information for the Service to issue the charges. The preparation and service of charging documents is labor intensive and would require diverting resources from the adjudication of applications filed by the large number of individuals who have asylum applications pending with the Service. Therefore, an asylum office's ability to issue charging documents upon request necessarily depends on the resources of the asylum office, the number of applications for suspension of deportation or special rule cancellation of removal initially filed by NACARA beneficiaries, the number of affirmative asylum applications the asylum office must adjudicate within the time limits imposed by statute, and other program requirements, such as the number of credible fear and reasonable fear interviews requested of the office. The Department will be in a better position to determine the feasibility of issuing charging documents upon request after the affirmative program has begun and allocation of resources based on the number of NACARA applications filed each month can be evaluated more accurately.

Jurisdiction—''Still Pending Adjudication by the Service''

Several commenters requested that the regulations clarify what is meant by ''still pending adjudication by the Service'' for purposes of determining who is eligible to apply with the Service.

Section 240.62(a) of the proposed rule provides for Service jurisdiction over certain applicants whose asylum applications are ''pending adjudication by the Service'' at the time the applicants apply for relief under NACARA. For the sake of clarity, the interim rule contains a definition of this phrase at § 240.60. An asylum application will be considered ''pending adjudication by the Service,'' if the Service has not served the applicant with a final decision or referred the application to the Immigration Court. This means that, unless the Service has served the applicant with a final decision to grant asylum or deny asylum, or has served the applicant with documents referring his or her application to the Immigration Court, the asylum application will be considered pending with the Service, even if a final decision has been made by the Service, but not yet served on the applicant.

Jurisdiction—Scope of ABC Class Members' Eligibility to File With the Service

Several commenters requested that the regulations clarify the statement ''otherwise met the asylum filing deadline pursuant to the *ABC* settlement agreement,'' contained in § 240.62(a). The commenters recommended that the phrase be interpreted to mean that certain *ABC* class members can still apply for asylum under the settlement agreement if the Service failed to serve them properly with required notices.

Paragraphs (a)(1) and (2) of § 240.62 give the Service jurisdiction over applications for suspension of deportation or special rule cancellation of removal filed by registered *ABC* class members who, in the Service's determination, are eligible for benefits of the settlement agreement and whose asylum applications are still pending adjudication by the Service. To be eligible for the benefits of the settlement agreement, a registered class member must have filed for asylum by a specified date. Consistent with the settlement agreement, the Service has allowed a very small number of Salvadoran class members who registered for *ABC* benefits, but missed the requisite asylum filing date, to apply for asylum under the terms of the settlement agreement. Such applications are permissible where the Service determines that it failed to send those individuals a copy of Notice 5, as required by the settlement agreement. Under the settlement agreement, the Service was obligated to send Notice 5, which informed class members that they had to apply for asylum on or before January 31, 1996, in order to retain benefits of the settlement agreement, to Salvadoran class members who had applied for TPS. To date, the Service has not excepted any other class members from the asylum filing deadlines for any other reason. However, the Department included the broad language in § 240.62(a)(1) and (2), ''or otherwise met the asylum application filing deadline pursuant to the *ABC* settlement agreement,'' to enable the Service to maintain jurisdiction over a class member who demonstrates that he or she did not meet the requisite filing deadline because of some fault of the Service, such as failure to serve certain required notices. The burden is on the class member, however, to establish that the Service was at fault.

The Department declines to adopt the definition recommended in the comments because it would not afford the necessary flexibility that may benefit the *ABC* class. The Department takes this action with the understanding that, pursuant to current practice and as documented in the *ABC* Procedures Manual that is used by field personnel in implementing the *ABC* settlement agreement, the Service will extend the asylum filing deadline if it determines that a Salvadoran class member who applied for temporary protected status was not properly sent Notice 5.

Initial Eligibility

Advance Parole and Eligibility to Apply for NACARA

Several commenters disagreed with the Department's determination that NACARA beneficiaries in deportation proceedings who had previously left the country and returned under a grant of advance parole are ineligible for NACARA relief. They argued that, while such persons may be ineligible for suspension of deportation, they should be eligible to apply for special rule cancellation of removal by virtue of their status of inadmissibility.

For aliens present in the United States, a grant of advance parole under section 212(d)(5) of the Act permits the individual to leave the United States temporarily with advance permission to return to the United States. Upon expiration of parole, however, the statute requires that an applicant must be ''dealt with in the same manner as that of any other applicant for admission to the United States.'' Consequently, an applicant who was previously considered deportable would be considered inadmissible for purposes of determining eligibility for any form of relief. As a practical matter, very few individuals in deportation proceedings were ever granted advance parole, but those who did receive permission to depart would have been subject, upon return, to termination of the deportation proceedings along with receipt of new charging documents placing them in exclusion proceedings. A very small number of *ABC* class members whose deportation proceedings were administratively closed pursuant to the settlement agreement received advance parole. Upon their return, they were then technically inadmissible to the United States rather than deportable. In the normal course of events, those persons denied asylum at their *de novo ABC* adjudication would have been placed in exclusion proceedings once their parole was terminated. Because *ABC* asylum adjudications did not begin until 1997 and were subsequently suspended in 1998, as a result of NACARA, many, if not all of these cases have not yet been adjudicated.

For purposes of a NACARA adjudication before the Service, this small group of *ABC* class members might be ineligible for suspension of deportation based solely on their change in status from deportable to inadmissible, if their deportation proceedings are still pending when their NACARA applications are adjudicated. Though temporary absences from the United States ordinarily would not automatically terminate or nullify previously commenced deportation proceedings, they likely would in this circumstance because these individuals became applicants for admission upon their return to the United States under advance parole, and the deportation charges contained in the show cause orders previously issued in their cases are no longer applicable. *See Matter of Brown,* 18 I & N Dec. 324 (BIA 1982). In these narrow set of circumstances, it is appropriate to consider the deportation proceedings against an individual who departed and returned to the United States under a grant of advance parole while those deportation proceedings were pending as having terminated as of the date of the person's departure from the United States. If the Service determines that such an applicant is eligible for relief under section 203 of NACARA, the applicant will be granted special rule cancellation of removal. If the applicant is not granted NACARA relief and is not granted asylum, the Service will issue charging documents placing the person into removal proceedings.

To the best of the Department's knowledge, only *ABC* class members will be affected by this provision. However, the rule permits asylum officers to follow the same procedure for any other applicant within their jurisdiction who received advance parole while in deportation proceedings.

Eligibility To Apply for NACARA in Exclusion Proceedings

Another issue raised by the commenters is whether section 203 of NACARA and the implementing regulations apply to NACARA beneficiaries who were in exclusion proceedings as of April 1, 1997, including those *ABC* class members who were in exclusion proceedings and had those proceedings administratively closed or continued by EOIR to allow the class members to pursue *de novo* adjudications of their asylum claims by the Service, as provided by the *ABC* settlement agreement. These commenters argued that Congress indicated its clear intent to make NACARA relief available to persons in exclusion proceedings, because the statute provides that NACARA's special rules apply ''regardless of whether the alien is in exclusion or deportation proceedings.* * *'' IIRIRA section 309(c)(5)(C)(i), as amended by section 203(a)(1) of NACARA. Several commenters suggested that the intent of Congress can be carried out by placing individuals currently in exclusion proceedings into removal proceedings by: (1) electing to proceed under new removal procedures in those cases where an evidentiary hearing in the exclusion process had not commenced prior to April 1, 1997, pursuant to section 309(c)(2) of IIRIRA; or (2) terminating exclusion proceedings where there has not been a final administrative decision and reinitiating them as removal proceedings, as provided for under section 309(c)(3) of IIRIRA.

Courts have consistently stated that suspension of deportation is unavailable to persons in exclusion proceedings, *see Matter of Torres,* 19 I & N 371, 372–73 (BIA 1986); *Landon* v. *Plasencia,* 459 U.S. 21, 26–27, 103 S.Ct. 321, 325–26, 74 L.Ed.2d 21 (1982) (''[T]he alien who loses his right to reside in the United States in a deportation hearing has a number of substantive rights not available to the alien who is denied admission in an exclusion proceeding'[including the right to] seek suspension of deportation.''), even if the person has been present in the United States for an extended period of time under a grant of parole. *Yuen Sang Low* v. *Attorney General of U.S.,* 479 F.2d 820, 822 (9th Cir.), *cert. denied,* 414 U.S. 1039 (1973). This principle has recently withstood statutory and constitutional challenges, despite the recognition that IIRIRA eliminated the distinction between deportation and exclusion for proceedings initiated on or after April 1, 1997, by replacing them with a single removal process. *See Patel* v. *McElroy,* 143 F.3d 56 (2nd Cir. 1998) (statutory challenge); *Skelly* v. *INS,* 168 F.3d 88 (2nd Cir. 1999) (constitutional challenge based on equal protection principles).

The general rule laid out in IIRIRA for the transition from exclusion and deportation procedures to a unified removal process is that, for ''an alien who is in exclusion or deportation proceedings as of [April 1, 1997],'' the amendments to the procedures for removing individuals from the United States instituted by IIRIRA ''shall not apply,'' and exclusion and deportation proceedings ''shall continue to be conducted without regard to such amendments.'' IIRIRA section 309(c)(1). The IIRIRA transitional rules dealing with suspension of deportation, as amended by section 203 of NACARA, are directed solely to outlining the circumstances under which the new cancellation of removal rules regarding continuous residence and physical presence, found in section 240A(d)(1) and (2) of the Act, apply to individuals who were placed in exclusion or deportation proceedings prior to April 1, 1997.

Under the transitional rules for suspension of deportation cases, section 309(c)(5)(A) of IIRIRA, as amended by NACARA, states that the rules regarding continuous residence and physical presence generally apply to orders to show cause regardless of when the orders to show cause are issued, thus making these rules applicable to requests for suspension of deportation. The first exception to this rule, located at section 309(c)(5)(B) of IIRIRA, as amended by NACARA, provides that the new continuous residence and physical presence rules found at section 240A(d)(1) and (2) of the Act will not apply to an order to show cause issued prior to April 1, 1997, when the Attorney General decides to terminate a pending exclusion or deportation proceeding under section 309(c)(3) of IIRIRA and reinitiate the proceeding under removal provisions. The exception described in section 309(c)(5)(C)(i) of IIRIRA, as amended by NACARA, states that these new rules regarding continuous residence and physical presence will not apply to NACARA beneficiaries who request suspension of deportation or cancellation of removal. While the first exception simply prevents the application of the new continuous residence and physical presence rules to an order to show cause in one particular situation, the second exception exempts NACARA beneficiaries from the continuous residence and physical presence rules whenever they file for suspension of deportation under the pre-IIRIRA section 244 of the Act, or for regular cancellation of removal under section 240A of the Act (additional rules establishing eligibility for NACARA special rule cancellation of removal are covered separately in section 309(f) of IIRIRA, as amended by NACARA), ''regardless of whether the alien is in exclusion or deportation proceedings before [April 1, 1997].'' IIRIRA section 309(c)(5)(C)(i), as amended by NACARA.

Contrary to showing a congressional intent that NACARA relief be made available to persons in exclusion proceedings, the phrase quoted above and cited in several comments simply indicates that Congress did not want the new continuous residence and physical presence rules to apply to NACARA beneficiaries who are eligible to apply for suspension of deportation or cancellation of removal no matter what charging documents, if any, may have been issued to them prior to April 1, 1997. This language makes clear that the initiation of exclusion proceedings against NACARA beneficiaries prior to April 1, 1997, does not result in the application of the new continuous residence and physical presence rules to their cases, acknowledging the possibility that such individuals may have their exclusion proceedings changed into removal proceedings under the transitional rules covered in section 309(c)(2) and (3) of IIRIRA.

None of these transitional rules dealing with suspension of deportation override the general transition rule that subjects a person placed into exclusion proceedings prior to April 1, 1997, to the rules governing exclusion that were in place before IIRIRA was enacted. IIRIRA section 309(c)(1). Included among those rules is the long-standing principle that persons in exclusion proceedings are ineligible to apply for suspension of deportation. As noted by certain comments, the IIRIRA transitional rules provide a way to allow such individuals to apply for special rule cancellation of removal under NACARA. This could be done by applying removal procedures to those cases in which an evidentiary hearing has not commenced as of April 1, 1997, as allowed under section 309(c)(2) of IIRIRA, or by terminating the exclusion proceedings and reinitiating proceedings under section 240 of the Act, as provided for under section 309(c)(3) of IIRIRA. For purposes of this interim rule, the Department declines to pursue these options at this time, but invites additional comments on this point.

Effect of ''Apprehended at Time of Entry'' Limit on Eligibility

Several commenters requested that the regulations define the term ''apprehended at time of entry'' to promote consistency in interpretation. The commenters also proposed the following definition: ''The phrase ''apprehended at time of entry'' means a person who was arrested at a United States port-of-entry between December 19, 1990, the preliminary approval date of the settlement agreement, and January 31, 1991, the date the court approved the settlement agreement.''

The interim rule will not be amended to include this definition. Section 203 of NACARA provides that a registered *ABC* class member who ''was not apprehended after December 19, 1990, at the time of entry,'' may apply for suspension of deportation or special rule cancellation of removal under the provisions enacted by NACARA. The language ''apprehended * * * at time of entry'' was derived from paragraph 2 of the *ABC* settlement agreement, which states, ''Class members apprehended at the time of entry after the date of preliminary approval of this agreement shall not be eligible for the benefits hereunder.'' *See American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796, 800 (N.D. Cal. 1991). The date of preliminary approval of the settlement agreement was December 19, 1990. There is no provision in either the settlement agreement or section 203 of NACARA limiting this provision to those registered class members apprehended at time of entry between December 19, 1990, and January 31, 1991, nor is there any provision that excludes from the applicability of this provision registered class members apprehended after January 31, 1991. The Service consistently has implemented the plain meaning of the language in the settlement agreement in denying *ABC* benefits to class members apprehended at the time of entry after December 19, 1990. There is no indication that Congress intended to redefine the exclusionary ground included in the settlement agreement or to limit the corresponding statutory provision only to registered class members apprehended at the time of entry prior to January 31, 1991. Therefore, the Department does not believe that the interpretation suggested in the comments is permitted by NACARA.

The Department has carefully considered the value of including a definition of ''apprehended at time of entry'' within the rule, but does not believe that it is appropriate to do so. The Service has issued and continues to provide policy guidance to its officers explaining that a class member who has been apprehended after the class member has effected an entry (consistent with the former ''entry doctrine'') cannot be considered to have been apprehended at the time of entry. Deriving guidance from the definition of ''entry'' under the Act, as it existed prior to April 1, 1997, and as developed by case law, the Service has instructed officers that the determination of whether an entry has been effected involves consideration of the following three factors: (1) whether the class member has crossed into the territorial limits of the United States; (2) whether the class member has been inspected or admitted by an immigration officer, or has actually and intentionally evaded inspection at the nearest inspection point; and (3) whether the class member crossed into the territorial limits of the United States free from official restraint, including free from surveillance. Because these factors necessarily are dependent on the individualized factors of each case, the Department has determined that it is more appropriate

to continue to provide internal guidance on the factors to consider in evaluating whether an entry has been effected than to attempt to codify a definition that would cover the wide variety of facts that may be present in an individual case.

Guatemalans and Salvadorans Filing for Asylum by April 1, 1990

Several commenters suggested that the proposed rule reads too narrowly the eligibility requirement contained at section 309(c)(5)(C)(i)(II) of IIRIRA, as amended by NACARA. This sections permits Salvadorans and Guatemalans who ''filed an application for asylum with the Immigration and Naturalization Service'' prior to April 1, 1990, to apply for relief under NACARA. Section 240.61(a)(2) of the proposed rule would limit eligibility to those persons who filed an application for asylum directly with the Service. The commenters note that the proposed rule fails to account for those persons who filed for asylum by April 1, 1990, before the Immigration Court. The comments argue that the critical factor in section 309(c)(5)(C)(i)(II) of the statute relates to asylum filing date, rather than the forum of filing. The comments further note that any application filed with the Immigration Court was necessarily served on the Service. They argue that a restrictive reading of the statute unnecessarily limits eligibility, and that filing for purposes of this section should be met whenever an applicant filed for asylum with the Department of Justice.

The Department agrees that section 309(c)(5)(C)(i)(II) of IIRIRA is subject to different interpretations. In drafting the proposed rule, the Department contrasted the wording of this section with that of section 309(c)(5)(C)(i)(V) of IIRIRA, as amended by NACARA, which permits certain nationals of former Soviet bloc countries to apply for relief under NACARA if they ''filed for asylum on or before December 31, 1991.'' The proposed rule reflected the Department's initial interpretation that subclauses (II) and (V) should be read together, such that subclause (II) should be read to limit eligibility to those who filed an affirmative asylum application with the Service, while an individual could be eligible for relief under subclause (V) as long as an asylum application was filed before either the Service or before the Immigration Court.

Although this interpretation is consistent with the literal wording of the statute, the Department recognizes that, in determining eligibility to apply for suspension of deportation or special rule cancellation of removal under NACARA, ''filed'' could be read more broadly to mean either submitted to or served on the Service. This interpretation is supported by several factors. First, it is more appropriate to track subclauses (I) and (II) rather than subclauses (II) and (V). Section 309(c)(5)(C)(i) of IIRIRA contains two provisions specifically relating to Salvadorans and Guatemalans. Subclause (I) permits Salvadorans and Guatemalans who entered the United States prior to September 19, 1990, and October 1, 1990, respectively, to file for NACARA relief if they registered for benefits under the *ABC* agreement by the dates specified in the agreement. Subclause (II) relates to Salvadorans and Guatemalans who filed for asylum by April 1, 1990, regardless of whether they also registered for *ABC* benefits. When subclause (I) and (II) are read together, the application of the statute creates inconsistent results unless subclause (II) is interpreted to cover both Service and EOIR asylum filings. For instance, a Salvadoran placed in immigration proceedings who filed an application for asylum with the Immigration Court by April 1, 1990 is, by definition, a member of the *ABC* class because he or she entered the United States prior to September 19, 1990. If he or she registered for *ABC* benefits, he or she would be eligible to apply for relief under subclause (I), even though he or she did not initially file the asylum application with the Service. Given that subclause (II) essentially concerns *ABC* class members who failed to register for *ABC* benefits, it is inconsistent with the ameliorative purposes of NACARA to limit eligibility solely to those persons who filed directly with the Service.

Second, NACARA makes use of either *ABC* registration deadlines or asylum filing deadlines to identify eligible aliens. A grant of asylum confers the same benefits regardless of whether the grant is conferred by an asylum officer or an Immigration Court. It is the act of filing for asylum or registering for *ABC* benefits, rather than the forum, that distinguishes subclause (II) applicants from those Salvadorans and Guatemalans in the United States who never applied for asylum or registered for *ABC* benefits.

Consequently, 8 CFR 240.61(a)(2) has been amended to include a Guatemalan or Salvadoran national who filed an application for asylum with the Service on or before April 1, 1990, either by filing an application directly with the Service or filing the application with the Immigration Court and serving a copy of that application on the Service.

Determining When an Application for Asylum is Filed

Though not included in the proposed rule, the Department has included in § 240.60 of this interim rule a definition for determining when a person is considered to have ''filed an application for asylum.'' This definition is necessary in order to determine eligibility to apply for relief under section 203 of NACARA. The definition will also be used to determine the date a dependent included in an asylum application is considered to have ''filed'' for asylum. Under this definition, any dependent spouse or child who was present in the United States and included in the principal's asylum application at the time it was filed will be considered to have filed an application for asylum on the date the principal's asylum application was filed. Any dependent who is added to the principal's asylum application after it was initially filed will be considered to have filed an application for asylum on the date the dependent was added to principal's asylum application.

Eligibility—NACARA Dependents

One commenter requested that the regulations specify that children and spouses can file for relief under NACARA after they have attained 7 years of continuous physical presence in the United States, even if they had not been continuously present in the United States for 7 years at the time the statute was enacted, or have not reached 7 years by the time the rule implementing section 203 of NACARA becomes effective.

The Department agrees with this interpretation. Both section 203 of NACARA and the interim rule allow children and spouses to apply for relief under NACARA, even if they had not been continuously physically present in the United States for 7 years at the time NACARA was enacted or implemented. To meet the physical presence requirement, the spouse or child must have 7 years of continuous physical presence in the United States (10 years, if certain inadmissibility or deportability grounds apply) as of the date the application for relief was filed. Unlike section 202 of NACARA, there is no deadline for applying for relief under section 203 of NACARA.

Eligibility of Dependents Who Have Turned 21 Years of Age Since NACARA Was Enacted

Several commenters expressed concern about children who have lost or will lose eligibility to apply for relief pursuant to section 309(c)(5)(C)(i)(III) of

IIRIRA, as amended by section 203(a) of NACARA, because they turned 21 years of age between November 19, 1997, the date NACARA was enacted, and the effective date of this regulation. Several commenters suggested that the regulations ''grandfather'' in all unmarried sons and unmarried daughters who have turned 21 years of age since November 19, 1997. The commenters compare the current situation to that faced by juveniles eligible for special immigration status under section 153 of the Immigration Act of 1990 (IMMACT 90), Pub. L. 101–649 (104 Stat. 4978), who aged out prior to the publication of regulations implementing that section of the law. Under the rule, juveniles who met the statutory requirements on the date the statute was enacted, but who had aged out prior to implementation of regulations, were permitted to apply for and receive special immigrant status.

Comparison to the rule implementing section 153 of IMMACT 90 is not persuasive, as the statutes and circumstances in question are not analogous. Regulations implementing section 153 of the Immigration Act of 1990, governing special eligibility provisions for juveniles to adjust to lawful permanent resident status, ''grandfathered'' in certain juveniles who met eligibility requirements on November 29, 1990. This was done because IMMACT 90 did not originally exempt special immigrant juvenile aliens from the normal statutory requirements for adjustment of status. Recognizing that most special immigrant juvenile alien adjustment applicants were statutorily ineligible for adjustment of status, for reasons unrelated to their age, Service offices were directed to accept and hold in abeyance applications filed by juveniles who appeared to meet the statutory requirements for special immigrant juvenile classification, but who may have been precluded based on statutory requirements for adjustment of status. This policy was adopted because the Service had put forward technical amendments that would exempt these applicants from many of the ineligibility grounds contained in sections 245 (a) and (c) of the Act. The technical amendments to the Act were enacted at the end of 1991. The supplementary information published as a final rule in the **Federal Register** on August 12, 1993, at 58 FR 42843, explained that the rule would apply the exemptions contained in the technical amendments to aliens who could establish that they otherwise met the eligibility criteria on November 29, 1990, ''to ensure that special immigrant juveniles are not precluded from obtaining lawful permanent residence because of the passage of time while the Service was awaiting Congressional action to amend the adjustment of status provisions * * *.''

Unlike the special immigrant cases, NACARA predicates eligibility for dependents of a NACARA principal applicant on a grant of suspension of deportation or cancellation of removal to the principal applicant. The Department may not extend eligibility to qualified individuals who were 21 years of age or older on the date of enactment of NACARA, or prior to promulgation of regulations implementing the affirmative application process because it exceeds the scope of eligibility permitted by the statute. In section 309(c)(5)(C)(i)(IV)(bb) of IIRIRA, as amended by NACARA, Congress explicitly linked the age of the unmarried son or daughter to the date the parent is granted suspension of deportation or cancellation of removal, not to the date the unmarried son or daughter's application is adjudicated or any other date.

In contrast to individuals covered by section 153 of IMMACT 90, nothing in NACARA precludes qualified children of NACARA beneficiaries from applying for relief once the parent or spouse has been granted suspension of deportation or special rule cancellation of removal. Any NACARA beneficiary who has a NACARA-eligible dependent nearing the age of 21 years old, and who has had an asylum application pending with the Service, has been afforded the opportunity to request an expedited adjudication of the asylum application. In such a case, if the asylum application were not granted, the applicant would be placed in removal proceedings where he or she could apply for relief under section 203 of NACARA with the Immigration Court. Alternatively, the parent could request that his or her pending asylum application be withdrawn in order to apply with the Immigration Court for both asylum and relief under section 203 of NACARA. In such cases, if the dependent was listed on the parent's asylum application and was included in the request for asylum, he or she would also be placed in proceedings and could file a NACARA application with the Immigration Court. The Service has outlined these options to the public in previous section 203 of NACARA information materials issued through the Service's Office of Public Affairs. (''Questions and Answers about NACARA and Cancellation of Removal,'' February 10, 1998; ''Nicaraguan Adjustment and Central American Relief Act of 1997,'' April 1, 1998; and ''Section 203 of the Nicaraguan Adjustment and Central American Relief Act of 1997,'' November 24, 1998.)

Initial Eligibility and ABC Class Members

One commenter stated that registered *ABC* class members who did not apply for asylum by the dates required to retain eligibility for benefits of the *ABC* settlement agreement should not be allowed to apply for relief under NACARA. The commenter argued that NACARA was intended to provide *ABC* class members with the opportunity to apply for suspension of deportation under the rules that existed before IIRIRA was enacted, and that if an *ABC* class member did not comply with the requirements of the *ABC* settlement agreement, the class member should not be allowed to apply for relief under NACARA.

Section 309(c)(5)(C)(i)(I) of IIRIRA, as amended by section 203(a) of NACARA, provides that any registered *ABC* class member who has not been apprehended, after December 19, 1990, at time of entry or convicted of an aggravated felony may apply for suspension of deportation or special rule cancellation of removal under the provisions enacted by NACARA. In contrast to sections 309(c)(5)(C)(i)(II) and (V) of IIRIRA, as amended by NACARA, there is no statutory language in section 309(c)(5)(C)(i)(I) of IIRIRA connecting eligibility to apply for relief under NACARA to the filing of an asylum application. Section 309(c)(5)(C)(i)(I) of IIRIRA contains no requirement that the registered class member have applied for asylum on any particular date, or ever have applied for asylum, but instead predicates eligibility to apply solely on nationality and entry date (which correspond to *ABC* class membership) and registration for *ABC* benefits. Therefore, the Department believes it would be improper to include in the regulations a substantive restriction on eligibility that is not reflected in the statute.

Substantive Eligibility

Eligibility-Continuous Physical Presence

Several commenters suggested revisions to § 240.64, regarding the calculation of continuous physical presence. With respect to § 240.64(b)(1), concerning continuous physical presence for suspension of deportation cases, the commenters suggested modifying the ''brief, casual, and innocent'' standard by defining single absences not exceeding 90 days or

aggregate absences not exceeding 180 days to be considered ''brief'' in order to parallel the standard used in cancellation of removal cases. The commenters further proposed that absences of greater duration should be evaluated on a case-by-case basis, and that the applicant should still be required to establish that any departure was casual or innocent.

With respect to § 240.64(b)(2), relating to special rule cancellation of removal, several commenters objected to the requirement that an applicant must establish that single absences of 90 days or less were brief, casual, and innocent. These commenters argued that such a requirement was inconsistent with the Act. Similarly, these commenters objected to the language contained in § 240.64(b)(3), which states that a departure incident to a final order of deportation or removal, or an order of voluntary departure, or with the intent to commit a crime terminates continuous physical presence. The commenters suggested amending the provision for special rule cancellation of removal to delete the mandatory finding and substitute language providing that such absences may be the basis for finding that continuous physical presence has been terminated.

The Department will adopt certain suggestions regarding the definition of a ''brief'' absence from the United States. As proposed, § 240.64(b)(1) reiterates former section 244(b)(2) of the Act, as in effect prior to IIRIRA, which establishes that for purposes of continuous physical presence, absences from the United States will be evaluated based on a determination of whether the absence was brief, casual, and innocent. Initially, the Department chose to adopt this language without further clarification in the rule, based on the body of case law interpreting this provision, as well as the greater flexibility inherent in the phrase ''brief, casual, and innocent.'' Because the concept of ''brief, casual, and innocent,'' however, goes to the nature of a departure, it is consistent with section 244(d)(2) of the Act, as in effect prior to IIRIRA, to provide some guidance within the rule regarding one or more of these factors. Given the use of the 90/180-day rule within the context of both cancellation of removal and special rule cancellation of removal, it is reasonable to adopt these timeframes for purposes of suspension of deportation under NACARA. To assist adjudicators and to ensure consistent determinations regarding the length of a departure, the Department will revise the rule to define a ''brief'' absence as one of 90 days or less or an aggregate of 180 days or less. Absences of greater duration will still be considered on a case-by-case basis in suspension cases in order to comply with the broader language of ''brief, casual, and innocent'' contained in the statute. All absences will be evaluated, however, to determine whether or not they were casual and innocent.

The Department will also amend § 240.64(b)(2) of the proposed rule relating to special rule cancellation of removal to reflect the definition of ''brief'' adopted in § 240.64(b)(1). It is not appropriate, however, to adopt the remaining suggestions relating to special rule cancellation of removal. The commenters suggest that it is contrary to the statute to disqualify a special rule cancellation of removal applicant based on the nature of his or her absences. Neither NACARA nor the Act, as amended by IIRIRA, precludes such an evaluation, and when the 90/180-day rule is read within the context of immigration reform under IIRIRA, it is apparent that Congress intended certain kinds of departures, such as those made in furtherance of criminal offenses, to terminate continuous physical presence. Similarly, through reinstatement under section 241(a)(5) of the Act, Congress severely limited the opportunity to seek relief for aliens who illegally reenter the United States after previously being removed, or departing voluntarily under final orders.

The interim rule resolves the apparent inconsistency by clarifying the effect of certain absences of 90 days or less in a manner consistent with suspension of deportation. Specifically, the second sentence of § 240.64(b)(2) retains the analytical framework of the brief, casual, and innocent standard to account for those situations in which a relatively brief absence nonetheless meaningfully interrupts continuous physical presence. The burden of proof remains on the applicant to establish the ''casual and innocent'' nature of such departures in order to conform with the burden of proof required under suspension of deportation. While § 240.64(b)(2) attempts to account for departures generally, § 240.64(b)(3) identifies specific departures that have long been considered to break continuous physical presence in the context of suspension of deportation adjudications. It is, therefore, both reasonable and necessary to place the same restrictions on special rule cancellation applicants.

Eligibility-Statutory Bars

Several commenters asserted that the regulations should not subject NACARA beneficiaries to bars to eligibility for suspension of deportation or special rule cancellation of removal, such as section 242B(e) of the Act, as in effect prior to April 1, 1997, and current section 240(b)(7) of the Act. The commenters maintain that Congress intended to waive substantive bars relating to eligibility. Citing section 203(c) of NACARA, which allows beneficiaries to file a motion to reopen ''[n]otwithstanding any limitation imposed by law,'' the commenters argue that the plain language of the statute indicates that the goal of section 203 of NACARA was to waive all limitations on relief. The commenters note that Congress excepted from this provision limitations premised on an alien's conviction of an aggravated felony. The commenters argue that, because there is no provision of law that bars an individual convicted of an aggravated felony from filing a motion to reopen, Congress must have intended this provision to apply to all other limitations to relief, not just to limitations on motions to reopen.

The regulatory requirements reflecting the statutory bars will remain unchanged. The Department's analysis of the statutory bars has been fully set out in both the supplemental information in the proposed rule, at 63 FR 64895, and in the supplemental information in the interim rule concerning NACARA motions to reopen, at 63 FR 31890. The parenthetical relating to aggravated felonies contained in section 203(c) of NACARA does not overcome the definitive statutory language indicating that the paragraph is directed at statutory limitations on motions to reopen. The parenthetical is more properly read as a reiteration of the basic eligibility requirement rather than a rejection of all other substantive eligibility requirements. This parenthetical in no way exempts NACARA beneficiaries from the statutory bars to suspension of deportation or cancellation of removal.

Eligibility-Battered Spouses and Children

A significant number of commenters requested that the Department address the special circumstances of battered spouses and children who are eligible for suspension of deportation under section 244(a)(3) of the Act, prior to IIRIRA, or cancellation of removal under section 240A(b)(2) of the Act. Those provisions permit the battered spouse and child(ren) of a United States citizen or lawful permanent resident spouse or parent to qualify for suspension of deportation or cancellation of removal by showing 3, rather than 7 years of continuous physical presence, good

moral character, and extreme hardship to the alien, the alien's child, or in the case of an alien who is a child, to the child's parent. Specifically, the commenters asked that the special criteria used to evaluate extreme hardship in adjustment of status self-petitions submitted by battered spouses and children should also be made explicitly applicable to those individuals seeking relief through suspension of deportation or cancellation of removal. The commenters noted that the Violence Against Women Act (VAWA), a component of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322 (108 Stat. 1902–1955), created provisions to aid battered immigrants whose ability to remain permanently in the United States may be threatened by abusive spouses or parents.

In the context of self-petitioning, provided for in sections 204(a)(1)(A)(iii) and (iv) and 204(a)(1)(B)(ii) and (iii) of the Act, the Service has issued guidance instructing adjudicators to consider certain factors when evaluating a claim of extreme hardship based on domestic abuse. These factors are:

(1) The nature and extent of the physical or psychological consequences of abuse;

(2) The impact of loss of access to the United States courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, maintenance, child custody, and visitation);

(3) The likelihood that the batterer's family, friends, or others acting on behalf of the batterer in the home country would physically or psychologically harm the applicant or the applicant's child(ren);

(4) The applicant's needs and/or needs of the applicant's child(ren) for social, medical, mental health, or other supportive services for victims of domestic violence that are unavailable or not reasonably accessible in the home country;

(5) The existence of laws and social practices in the home country that punish the applicant or the applicant's child(ren) because they have been victims of domestic violence or have taken steps to leave an abusive household; and

(6) The abuser's ability to travel to the home country and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's child(ren) from future abuse.

The commenters requested inclusion of these factors in the regulation in order to ensure consistent application of these considerations, whether the applicant seeks relief through the self-petitioning process, under NACARA, or in the course of non-NACARA immigration proceedings. Many commenters expressed concern that omission of the factors would suggest that domestic violence issues were irrelevant in the context of suspension or cancellation adjudications. The commenters also noted that many applicants who had experienced domestic violence would be reluctant to raise such issues on their own, and that including these factors would assist attorneys and adjudicators in eliciting information, and would help applicants to understand that fears of domestic abuse or other repercussions were legitimate issues for the adjudicator to consider.

The commenters correctly note that the suspension and cancellation provisions pertaining to domestic abuse are part of a broader series of initiatives to protect battered spouses and children within the immigration laws. Most notably, sections 204(a)(1)(A) and (B) of the Act, as amended, permit victims of domestic violence to self-petition for adjustment of status so that their ability to reside permanently in the United States is not conditioned on submission of a petition on their behalf by the abusive spouse or parent. The criteria for adjustment of status under this provision is similar to that required in the suspension or cancellation context, except that the spouse or child must be able to establish 3 years of residence in the United States. To assist adjudicators in evaluating extreme hardship to these self-petitioners, the Service has issued guidance regarding the special nature of domestic abuse cases and the kind of hardship that may be present. *See* Supplementary Information to the interim rule, published on March 26, 1996, at 61 FR 13061, ''Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children;'' Memorandum for Terrance M. O'Reilly, Director, Administrative Appeals Office, from Paul Virtue, Office of General Counsel, '' 'Extreme Hardship' and Documentary Requirements Involving Battered Spouses and Children,'' (October 16, 1998), reprinted at 76 Interpreter Releases 162 (January 25, 1999).

Nothing in the proposed rule prohibits an applicant from raising the VAWA factors in support of a suspension of deportation or cancellation of removal application. The Department agrees, however, that the factors should be included in the interim rule to avoid confusion. The addition of these factors also affirms the Department's commitment to aiding victims of domestic violence and will assist adjudicators, attorneys, and applicants in eliciting and developing relevant facts.

Consequently, new § 240.58(c) lists the VAWA factors and also clearly states that these factors are relevant in any extreme hardship determination in the context of a request for suspension of deportation, whether or not it is within the context of section 244(a)(3) of the Act, as in effect prior to IIRIRA. Sections 240.64(c) and 240.20(c) of the interim rule will also reflect that domestic violence factors are relevant to the extreme hardship determination with regards to requests for special rule cancellation of removal and cancellation of removal under section 240A(b)(2) of the Act, respectively.

Rebuttable Presumption of Extreme Hardship for Certain NACARA Beneficiaries

Virtually all public commenters contained a request that the Department extend some form of a presumption of extreme hardship to principal NACARA applicants, including nationals of the former Soviet bloc. In particular, the majority of commenters asked the Department to extend a presumption to those Salvadorans and Guatemalans who are class members of the *ABC* lawsuit. Many of the commenters requested that evidence of class membership should be considered sufficient to establish extreme hardship based on the conditions in El Salvador and Guatemala, particularly after Hurricane Mitch. Additionally, commenters argued that the class had been protected for prolonged periods of time from deportation as a result of the *ABC* settlement agreement and other measures staying deportation, including TPS for Salvadorans, such that class members had established ties to the United States, a significant factor in evaluating hardship.

Some commenters discussed at great length factors the authors believed to be relevant to an extreme hardship determination for the *ABC* class. The commenters noted, for instance, that many class members have children who were either born in the United States or who came to this country at such a young age that they have little or no memory of El Salvador or Guatemala. The commenters also identified other factors, including the circumstances under which the class members fled

their countries, the quality of health care and educational opportunity in those countries, the psychological effects of returning to a country where an individual or a family member may have suffered persecution, the lack of sufficient employment opportunities in those countries, and the possibility of significant financial loss, as the commenters believe that many class members have purchased homes or started businesses in the United States. Many of the public comments also noted that a mandatory finding would enhance administrative efficiency by eliminating the need to make individual determinations of extreme hardship for the approximately 240,000 *ABC* class members who are eligible to apply for relief under section 203 of NACARA. As a further matter of administrative convenience, many commenters urged that the mandatory presumption should also be extended to nationals of the former Soviet bloc and all spouses, children, and unmarried sons and daughters over the age of 21 eligible for NACARA on the basis of a grant of relief to a parent or spouse (NACARA dependents).

One commenter objected to a presumption of extreme hardship on the grounds that it was contrary to NACARA and the Act, arguing that suspension of deportation or special rule cancellation of removal requires individualized determinations of extreme hardship in all cases.

The Department declines to adopt a blanket finding that all NACARA beneficiaries will suffer extreme hardship if they are deported or removed to their home countries, as such a finding would be contrary to the specific requirements of both NACARA and the Act, as well as the body of administrative and judicial interpretations that have been adopted regarding the meaning of ''extreme hardship.'' The Department has concluded, however, that strong factual evidence exists to support an evidentiary presumption of extreme hardship for those *ABC* class members who are eligible to apply for NACARA relief, as defined in § 240.61(a) or (b) of this interim rule. This conclusion is based on a determination that the *ABC* class shares certain characteristics that give rise to a strong likelihood that an *ABC* class member or qualified relative would suffer extreme hardship if the class member were deported or removed. Such a presumption may be rebutted by the Service if evidence in the record establishes that it is more likely than not that extreme hardship would not result from removal or deportation.

The creation of a presumption will not, however, eliminate the necessity of examining the evidence of extreme hardship in each case. An applicant will be required to submit a completed application that includes answers to questions relating to extreme hardship and to answer questions regarding hardship at the interview or hearing. Adjudicators will determine whether there is anything to disprove the presumption of extreme hardship and may ask additional questions at the interview or hearing, if necessary. The burden of proof will lie with the Service to overcome the presumption, if supported by evidence in the record. In this way, the likelihood that *ABC* class members will suffer extreme hardship is balanced against the necessity of a case-by-case evaluation of the individual application. Eligibility criteria for the presumption, and the burden and standard of proof that will apply in presumption cases, are described in new § 240.64(d).

As noted in the supplemental material in the proposed rule, extreme hardship is determined on a case-by-case basis, taking into account the particular circumstances of the individual applicant. *Matter of Hwang,* 10 I & N Dec. 448, 451 (BIA 1964). While each application must be assessed on its own merits, and each applicant must be found statutorily eligible before being considered for this discretionary form of relief, neither NACARA nor the Act limits the Attorney General's authority to create appropriate rules and procedures for determining eligibility for suspension of deportation or special rule cancellation of removal. The Attorney General may elect to create a rebuttable presumption of extreme hardship as part of the adjudication of such cases. Initially, the Department believed that including a list of relevant factors and general guidance regarding a determination of extreme hardship would be sufficient to address concerns raised by the public. The concerns outlined in comments to the proposed rule have led the Department to assess whether further measures, consistent with the statute, are appropriate based on the unique circumstances of NACARA beneficiaries. The Department has concluded that such measures would be appropriate and would further an interest in greater administrative efficiency.

Further examination of the issue yields two conclusions. First, certain factors routinely noted in evaluations of extreme hardship may serve as strong predictors of the likelihood of extreme hardship in a given case. For instance, under the relevant case law, the longer an individual has lived in the United States beyond the requisite 7 years, the more likely he or she is to develop significant ties to the United States, and the more likely it is that the adjudicator will find extreme hardship. *See Matter of O-J-O,* Int. Dec. 3280 (BIA 1996) (dissenting opinion listing all published suspension cases). Similarly, the longer an applicant lives in the United States under protection from deportation, the more likely it is that he or she has developed long-term ties to the United States. *See Matter of L-O-G,* Int. Dec. 3281 (BIA 1996).

Second, the unique immigration history and circumstances of the *ABC* class has given rise to a group of approximately 240,000 NACARA-eligible individuals who share the general predictors of extreme hardship described in the preceding paragraph, as well as other predictors that are unique to this class. The composition of the group itself is unusual, as it is composed of Salvadorans and Guatemalans who either entered the United States and filed for asylum prior to April 1, 1990, or entered the United States prior to September 19, 1990, or October 1, 1990, respectively, and registered for benefits under the terms of the *ABC* settlement. These individuals fled circumstances of civil war and political violence in their homelands during the 1980s, and some applied for asylum in the United States. In 1985, advocates for Guatemalan and Salvadoran refugees, church groups, and refugees themselves brought suit against the United States Government for allegedly discriminatory treatment of Guatemalan and Salvadoran asylum applicants. The Department settled the litigation in 1990, following significant developments in its asylum and refugee law and procedures, including the creation of a professionally trained asylum officer corps and Congress's grant of TPS to Salvadorans.

As a result of the settlement, *ABC* class members who complied with all registration requirements were entitled to remain in the United States until such time as they received either a *de novo* review of their asylum applications, or, for those whose cases had not been adjudicated previously, a determination under special procedures. For administrative reasons and because of provisions in the settlement agreement regarding asylum filing deadlines, these adjudications were postponed during the period of time in which Salvadorans, who comprise approximately 80 percent of the class, were protected from deportation under TPS (January 1, 1991, to June 30, 1992) and Deferred Enforced Departure (DED)

(June 30, 1992, to December 31, 1994). The special adjudications were further postponed to provide registered class members who had not yet applied for asylum an opportunity to do so under the terms of the settlement. Consequently, Guatemalans and Salvadorans who wished to continue to remain eligible for *ABC* benefits (and also free from the fear of deportation) were required to file an asylum application if they had not previously done so. Guatemalans had to have filed for asylum on or before January 4, 1995, while Salvadorans were required to have filed their applications no later than January 31, 1996 (with an administrative extension until February 16, 1996). Although *ABC* adjudications began in April 1997, they were suspended in February 1998 in order to permit those *ABC* class members with pending asylum applications to apply for NACARA relief with the Service.

Yet another shared characteristic pertaining to immigration history is the difficulty many Salvadorans and Guatemalans might have faced had they repatriated during the early 1990s. Although the Salvadoran government and opposition were engaged in peace negotiations throughout 1990 and 1991, the United States recognized the need to provide special protection to Salvadorans residing in the United States. Congress first gave Salvadorans protection through TPS, and then, even after peace accords had been signed, the President extended protection through DED until the end of 1994. While these special protections were only formally accorded to Salvadorans, registered Guatemalan class members also benefited from these protections because it was not administratively efficient to conduct *ABC* interviews solely for Guatemalans. Furthermore, the Guatemalan peace accords were not signed until 1996, making it less likely that Guatemalan class members in the United States would have sought to repatriate prior to that time.

The result of this unusual immigration history is the creation of a large class of individuals who share certain strong predictors of extreme hardship. By the time NACARA adjudications before the Service begin, all NACARA-eligible *ABC* class members will have been in the United States at least 9 years, while more than two-thirds will have lived here for a decade or more. Most NACARA-eligible *ABC* class members will also have lived in the United States for a prolonged period of time without fear of deportation, and will have done so continuously from the date of the settlement agreement to the present day, if they maintained their eligibility for *ABC* benefits by filing an asylum application by the relevant deadline. As previously noted, length of stay, coupled with some form of authorized presence, can be a strong indicator that an applicant is likely to suffer extreme hardship.

Additional characteristics of the *ABC* class appear to add to the likelihood of extreme hardship. All NACARA-eligible class members who applied for asylum were entitled to work authorization in conjunction with their asylum applications. Similarly, all Salvadorans protected under TPS and DED were also entitled to work lawfully while under that protection. Recognizing that the expiration of DED in 1994 could harm those Salvadoran class members who had not yet filed an asylum application to maintain their eligibility for the benefits of the *ABC* settlement because the deadline for filing had not yet passed, the Government extended DED-based work authorization for Salvadorans until April 30, 1996. As a practical matter, *ABC* class members with work authorization are more likely to have access to steady employment, career opportunities, and reasonable wages than someone working in the United States unlawfully. Thus, it is more likely that *ABC* class members are participating more fully in the economy and would experience extreme hardship upon deportation or removal. While work authorization alone may not be a clear predictor of extreme hardship, the fact that class members were entitled to receive it, when viewed in addition to their long-term and authorized presence in the United States, adds to the likelihood that they have built strong ties to this country and would suffer extreme hardship if returned to El Salvador or Guatemala. For those class members with steady employment in the United States, the possibility of extreme hardship might be further compounded by reportedly significant underemployment in Guatemala and El Salvador.

Consequently, *ABC* class members eligible for relief under section 203 of NACARA will be presumed to satisfy the requirements for extreme hardship upon submission of a completed Form I–881. Although the Department has carefully considered requests to include other NACARA-eligible applicants within the presumption, the facts do not appear to justify a presumption for those applicants. The *ABC* class is distinguished from other NACARA applicants by its distinct legal identity and the specific characteristics identified in this discussion. This interim rule will, therefore, continue to require applicants who are not *ABC* class members to bear the burden of proof in establishing extreme hardship. However, the Department recognizes that these predictive characteristics may be present in other cases. Accordingly, the rule will provide that evidence of an extended stay in the United States without fear of deportation and with the benefit of work authorization shall be considered relevant to the determination of whether deportation will result in extreme hardship.

The Form I–881 and Instructions have been modified to address these changes. The form will explain that an applicant who is either a registered member of the *ABC* class, as described in Part II (a) of the form, or a Salvadoran or Guatemalan who applied for asylum prior to April 1, 1990, as described in Part II (b) of the form, will be presumed to meet the extreme hardship requirement unless evidence in the record establishes that neither the applicant nor a qualified relative is likely to experience extreme hardship. To qualify for the presumption, an applicant must answer all questions on the Form I–881 regarding extreme hardship, but will not initially be required to attach documentary evidence to support his or her answers. The instructions will note, however, that the Service may request additional documents for any aspect of the application, including extreme hardship, at the time of the interview.

The lack of one or more factors will not lead to a conclusion that the presumption has been overcome. Instead, adjudicators will evaluate an application on the basis of whether, given the presumption, the application contains evidence of factors associated with extreme hardship (as set forth in § 240.58). Generally, the presumption will be overcome only under two circumstances. First, the presumption might be overcome in those cases where there is no evidence of factors associated with extreme hardship (for example, an applicant who has no family in the United States, no work history, and no ties to the community). Second, evidence contained in the record could significantly undermine the basic assumptions on which the presumption is based. For example, if an individual has acquired significant resources or property in his or her home country, the individual and his or her qualified family members may be able to return without experiencing extreme hardship, in the absence of other hardship factors in the case (such as a serious medical treatment for which there is no treatment in the home country).

The adjudicator must evaluate all the evidence in the record and weigh it accordingly in making a determination as to whether the presumption has been overcome. In the case of applications submitted to the Service, a determination that the presumption has been overcome will result in referral to the Immigration Court or dismissal of the application, while such a determination by an Immigration Court will result in denial of the application.

Eligibility—Other Comments Regarding Extreme Hardship

Several commenters requested that the Department modify § 240.58(b) by deleting the sentence, ''To establish extreme hardship, an applicant must demonstrate that deportation would result in a degree of hardship beyond that typically associated with deportation.'' The commenters argued that this phrase could allow an adjudicator to discount an individual's particular hardship claim if it was similar to that of other applicants from the same country.

The Department believes it is not appropriate to delete this sentence. The discussion of extreme hardship contained in § 240.58(b) is based on the general principles set forth in numerous administrative law opinions and federal case law. These cases routinely note that extreme hardship must be something greater than the kind of disruption in a person's life that is likely to occur whenever someone is deported. As the supplemental discussion in the proposed rule explained, hardship does not have to be unique to be extreme, but the effect of deportation or removal on the individual or a qualified relative must be sufficiently clear to show that the hardship would be extreme.

Several commenters asked the Department to modify the list of extreme hardship factors contained in § 240.58 by providing expanded definitions for each factor. For instance, the commenters requested that § 240.58(b)(4), regarding an alien's ability to find employment in the proposed country of removal, should be further modified to indicate that the employment must pay a living wage. Similarly, commenters requested that § 240.58(b)(9), regarding the psychological effect of removal, list specific types of psychological harm, such as that which may be caused by an inability to support one's family. Other suggestions included specifically discussing membership in the *ABC* class as a relevant immigration history factor, as well as including remittances sent to family members abroad as a relevant factor under contributions to a community in the United States or to the United States, the impact of an environmental disaster within the proposed country of removal, and the difficulty of readjusting to one's country of origin.

Section 240.58(b) contains a non-exclusive and broadly worded list of factors that have been found relevant by adjudicators when determining whether extreme hardship would result from an individual's deportation. The present rule specifically notes that the listed factors are those that have generally been recognized in case law, but that other factors that have not been listed may be particularly significant in an individual applicant's case. It would be difficult to list all of the factors that may arise in a particular case. Additionally, the attempt to do so could be counter-productive because, as the description of each factor becomes more detailed, it could restrict the focus of the inquiry to the more narrow description of each factor. Moreover, some of the suggested modifications, if included in the rule, would exceed the scope of the current understanding of extreme hardship and, therefore, exceed the intended purpose of codifying these factors. The broader language of the present rule permits greater flexibility for applicants and adjudicators and will allow the assessment of new factors to occur within the context of specific adjudications. As previously explained, the Department has made an exception only in the case of the factors related to VAWA, which have been independently developed in the course of the self-petitioning process and are already in use in immigration proceedings.

Eligibility—Discretion

Several commenters requested that § 240.64(a) provide that status as an *ABC* class member or as a recipient of TPS or DED be considered a discretionary factor that weighs positively in favor of granting relief. The commenters further requested that the regulations explicitly provide that such authorized presence in the United States will outweigh all but the most egregious adverse discretionary factors.

Although the fact that an applicant has received TPS or DED may be considered in the discretionary decision to grant suspension of deportation or special rule cancellation of removal, the Department believes that it should not be given any more weight than other discretionary considerations. Immigration history, including the receipt of TPS or DED, is an appropriate factor to consider when evaluating extreme hardship during the eligibility determination. As such, it is unnecessary to require an adjudicator to give additional weight to immigration history in making a final determination.

Eligibility—Evidence

Several commenters requested that the regulations provide that the applicant's credible testimony by itself may be sufficient to satisfy the eligibility requirements. Other commenters stated that the regulation must include reference to the use of ''any credible evidence'' in any case involving battered spouses and children under section 244(a)(3) of the Act, as in effect prior to IIRIRA, or section 240A(b)(2) of the Act.

The Department declines to provide that credible testimony may be sufficient to establish eligibility for suspension of deportation or special rule cancellation of removal. In contrast to an applicant for asylum for whom credible testimony may be sufficient to establish eligibility, an applicant for suspension of deportation or special rule cancellation of removal may reasonably be expected to provide corroborating evidence of certain eligibility criteria. An asylum applicant understandably may not be able to provide documentary evidence of the circumstances that caused flight, given the nature of the claim. However, an individual who has lived in the United States for at least 7 years should be able to provide, where necessary, some form of documentary evidence of physical presence in the United States and, where necessary, corroboration of community ties or other evidence establishing that removal would result in extreme hardship.

With respect to applicants for suspension of deportation or cancellation of removal who are eligible to apply for relief under the special standards of section 244(a)(3) of the Act, as in effect prior to IIRIRA, or section 240A(b)(2) of the Act, those statutory provisions already provide that credible testimony may be sufficient to establish material facts in a case. Because the interim rule affects these cases only with respect to extreme hardship, it is unnecessary and potentially confusing to carve out a special provision within the NACARA implementing rule to address this issue.

Application Process

Fee for Filing NACARA Application

Comments regarding the proposed fee structure ($215 for individual applications, with a $430 family cap) ranged from adopting the $100 fee required for an application filed with the Immigration Court to expanding the

family cap to include family members who do not submit their applications simultaneously. One commenter requested that the regulations explain the fee requirements for someone who already paid a $100 application fee to submit an application for suspension of deportation or cancellation of removal in Immigration Court proceedings, but then requested that the Immigration Court or Board administratively close the case to allow the individual to apply with the Service.

As explained in greater detail in the supplementary information to the proposed rule, the Service is required by statute to fund the processing of applications through user fees. No appropriations have been provided by Congress from tax dollars to adjudicate applications for relief under section 203 of NACARA. The cost to the Service to adjudicate applications must be funded from the Immigration Examinations Fee Account, which is the sole source of funding for the processing of immigration and naturalization applications and petitions, and for other purposes designated by Congress, such as the processing of asylum applications for which no fee is required. Having carefully studied the estimated costs of adjudicating applications under section 203 of NACARA, the Service calculated that a fee of $215 for a single applicant, or $430 for a family filing at the same time, is necessary to recover costs associated with processing the applications. Therefore, the filing fee cannot be lowered to $100.

Similarly, the benefit of the family cap cannot be extended to those persons who do not file simultaneously because the $430 family cap takes into account administrative cost savings achieved by processing and adjudicating multiple cases as a single unit. Permitting applicants who file separately to take advantage of the cap undermines the projected savings and creates additional administrative costs. The only way to account for those costs would be to increase the fee for individual applications or to increase the family cap. The current fee represents an appropriate balance between the need to cover the costs of adjudication and avoiding prohibitively expensive filing fees.

The Department believes the current language in the regulation addresses the fee requirements for applying with the Service. Regardless of any fees an individual has paid in the past in the course of immigration proceedings, each individual who submits an application with the Service will be required to pay the full $215 application fee or the $430 family fee, as applicable. This includes any NACARA beneficiary who has already paid $100 to pursue an application for suspension of deportation or special rule cancellation of removal in immigration proceedings.

There are two general categories of NACARA beneficiaries who may be in immigration proceedings that have been administratively closed to allow the beneficiary to apply for relief with the Service. The first category comprises dependents of NACARA beneficiaries who have applied for section 203 NACARA relief with the Service. An individual in the first category may or may not have already submitted a fee to EOIR, depending on whether the individual has applied for any relief that requires an application fee. In such cases, the individual may opt to remain within the jurisdiction of the Immigration Court, rather than pay a higher fee to apply with the Service.

The second category comprises individuals who had final orders of deportation or removal that were reopened to allow the individuals to apply for benefits under section 203 of NACARA, and who then move to administratively close the proceedings to apply for benefits with the Service. An applicant is not required to pay the $100 filing fee for a suspension of deportation or special rule cancellation of removal application submitted in order to perfect a motion to reopen. The applicant is required only to submit to EOIR a copy of the application and supporting documents that would be filed if the case is reopened. The applicant is not required to pay the application fee until after a motion to reopen has been granted and the applicant has thus been allowed to apply for relief. At that time, the applicant will have a choice to either pay the fee and submit the original application to EOIR for adjudication by an Immigration Court, or ask that the case be administratively closed so that the applicant may apply with the Service. If the applicant has already paid the $100 to apply with EOIR and wishes to apply with the Service, the applicant will nonetheless be required to pay the full $215 application fee.

Filing the Form I–881 With the Service To Perfect a NACARA Motion To Reopen

One commenter requested that the rule should permit an applicant who must file a motion to reopen under section 203(c) of NACARA to submit the Form I–881 directly to the Service before his or her case has been reopened. Proof of filing with the Service would then permit the Immigration Court to reopen the case. The Department declines to adopt this procedure because it is contrary to 8 CFR 3.43, which establishes the procedure for NACARA motions to reopen. Additionally, this proposal, if adopted, would create an inefficient process for the Service and might result in applicants paying fees to the Service for applications that are never adjudicated. The proposed procedure to allow an individual to first submit an application to the Service before an Immigration Court has granted a motion to reopen would lead to instances in which an applicant pays $215 to the Service, but then is not allowed to proceed on the application, because an Immigration Court denies the motion to reopen or denies the motion to close the case once it has been reopened.

Limited Submission of the Form EOIR–40 to the Service

Many commenters requested that the regulations allow the limited submission to the Service of an already completed Form EOIR–40, for those applicants who submitted the Form EOIR–40 in proceedings that have been administratively closed.

The Department agrees that it would be unnecessarily burdensome for an applicant who had submitted a completed Form EOIR–40 to the Immigration Court to then complete a Form I–881 in order to apply with the Service. Most of the information requested on the Form I–881 is also requested on the Form EOIR–40. However, the information on the first page of the Form I–881 is necessary for the Service to determine jurisdiction, eligibility to apply, and for completion of data entry when accepting the application. Therefore, an applicant who filed a Form EOIR–40 before the date that the Form I–881 is available may apply with the Service by submitting the Form EOIR–40 attached to a completed first page of the Form I–881.

Also, any applicant who is filing with the Service a Form I–881 or Form EOIR–40 (with page 1 of the Form I–881 attached), and was previously in proceedings before EOIR that have been administratively closed or continued should attach to the application a copy of the order to administratively close the proceedings issued by the Immigration Court or Board. This documentation requirement has now been added to the instructions to the Form I–881.

E. Adjudication

Procedure for Interview Before an Asylum Officer—Fingerprinting, Rescheduling of Fingerprint and Interview Appointments

There were several comments regarding provisions governing fingerprinting and the rescheduling of fingerprinting appointments and interviews. Several commenters requested that fingerprinting appointments should be scheduled at the designated Application Support Center (ASC) nearest to applicant's home. Others requested that the regulation specify that an applicant may submit a request to reschedule the interview or fingerprinting appointment and should also provide a procedure for rescheduling the interview or the fingerprinting appointment. The comments suggested that the regulation allow applicants to make the requests either in writing or by phone and that the Service should assign staff to answer the phone. One commenter requested that all notices to applicants explain the procedure for canceling and rescheduling fingerprinting appointments and interviews. Another commenter suggested that the regulations incorporate paragraph 13 of the *ABC* settlement agreement, which provides special procedures to reschedule interviews for class members eligible for *ABC* benefits. Many commenters suggested that the *ABC* settlement procedures governing failure to appear for interviews should be applied to all NACARA adjudications.

The Service recognizes that an applicant must sometimes reschedule interviews and fingerprint appointments and intends to accommodate all reasonable requests, as long as resources permit and applicants do not appear to be abusing the process for purposes of delay.

With respect to initial fingerprint appointments, each applicant will be scheduled for fingerprinting at the ASC having jurisdiction over the applicant's place of residence. Only certain ASCs presently have the capability to accept requests for rescheduling. For an applicant scheduled for a fingerprint appointment at an ASC with the capability of rescheduling fingerprint appointments, the appointment notice will provide the applicant with the information necessary to request a rescheduling. For an applicant scheduled for an appointment at ASCs without this capability, the applicant will automatically be rescheduled by the Service for another fingerprint appointment if the Service does not receive confirmation that the applicant appeared for fingerprinting during the time period designated on the appointment notice.

The proposed rule required an applicant to show good cause in order to reschedule a missed interview. In order to avoid conflicts with the *ABC* settlement requirements, language governing the rescheduling of interviews contained in § 240.68 of the proposed rule has been amended to mirror the language of paragraph 13 of the *ABC* settlement agreement. A reasonable excuse provided to the Service will be sufficient to obtain a rescheduling of the fingerprint appointment or NACARA interview. A request to reschedule an interview should be submitted in writing to the asylum office having jurisdiction over the case before the date of the interview, where the need to reschedule is known by the applicant prior to the interview date, or immediately after the scheduled interview when the circumstances that led the applicant to miss the interview could not be foreseen in advance. Any significant delay by an applicant in submitting a written request to reschedule an interview increases the risk that the Service will find the applicant's failure to appear for an interview as unexcused, thus resulting in dismissal of the NACARA application or referral of the application to EOIR.

It is the applicant's duty to provide the Service with a mailing address to which the fingerprint and interview notice can be delivered. For cases in which the Service fails to send the appointment notice to the applicant's current address, the regulation continues to treat the failure to appear for fingerprinting or interview that results from the Service error as excused, provided that the applicant properly submitted his or her current address to the Service prior to the date the notice was mailed. In such circumstances, the Service would move to regain jurisdiction, if the case has already been referred to EOIR.

The Service does not presently have the capability to take requests to reschedule fingerprint appointments or interviews over the phone, and believes that a written record of such requests is in the applicant's best interests, because it creates a record of the applicant's attempt to comply with application requirements. The Department also does not agree with the comment that applicants should not be sanctioned for failure to appear unless they have been notified of the interview by certified mail or personal service. An asylum interview can be sent by regular mail to an individual's last address properly provided to the Service. A failure to appear for the asylum interview without prior authorization may result in dismissal of the application or waiver of the right to an interview. 8 CFR 208.10.

One commenter requested that fingerprinting delays not be permitted to delay the adjudication and approval by the Service of an application for relief under section 203 of NACARA. The Service intends to make no change in its plan to schedule NACARA applicants for interviews on their applications for suspension of deportation or special rule cancellation of removal only after the Service has received a definitive response from the Federal Bureau of Investigation (FBI) that a full criminal background check has been completed. This will allow an asylum officer to make a decision on the eligibility for NACARA relief at the time of the interview and give the Service the ability to grant an applicant who has an approvable NACARA claim legal permanent resident status on the day of the interview, where appropriate. Unlike the affirmative asylum process, there will be no need to issue recommended approvals to applicants for NACARA relief while the Service awaits fingerprint clearance.

Recent improvements in fingerprint processing were designed to reduce delays and should not affect interview scheduling and the adjudication of applications for suspension of deportation or special rule cancellation of removal under NACARA. Among the improvements in fingerprint processing are the automatic scheduling of a second fingerprint appointment for an applicant whose fingerprints are rejected upon first submission to the FBI, and the notification of asylum offices when an applicant's fingerprint submission has been rejected by the FBI for a second time.

Consequences for Failure to Appear

Several commenters requested amendments to the provisions regarding the consequences for failure to appear for an interview. Many commenters maintained that dismissal of an application for failure to appear for fingerprinting is a disproportionate penalty and that, instead, the applicant should have to pay the $25 fingerprinting fee again and be rescheduled for another fingerprinting appointment. Several commenters proposed that the regulations be amended to require the Service to grant suspension of deportation or special rule cancellation if it is clear from the application that the application should be granted, even if the person fails to appear for an interview. However, if the applicant is not clearly eligible for relief

and has not shown ''good cause'' for failure to appear, the application, in the view of the commenters, should be referred to the Immigration Court and not dismissed.

The Department declines to adopt these suggestions for minimizing the consequences of failing to appear for fingerprinting or for an interview. A proper determination of eligibility for suspension of deportation or special rule cancellation of removal cannot be made without interviewing the applicant. Suspension of deportation and special rule cancellation of removal are discretionary forms of relief with several substantive requirements that cannot be evaluated based upon a paper record. Therefore, the Service cannot properly grant an application for relief under section 203 of NACARA if an applicant fails to appear for an interview.

The Department believes that it is appropriate to adopt procedures restricting access to the Service application process when individuals fail to comply with procedural requirements. To do otherwise would disrupt the system and create delays that unfairly penalize applicants who complied with the requirements. The provisions allowing referral or dismissal are not only reasonable, but also more generous than other immigration provisions that permit denial of applications for failure to comply with interviewing or fingerprinting requirements.

In almost all cases in which an applicant fails to appear for an interview or fingerprinting appointment, the Service will refer the application to an Immigration Court for a decision. Therefore, the applicant will still have the opportunity to apply for suspension of deportation or special rule cancellation of removal before the Immigration Court.

The Service will not refer an application to the Immigration Court when the applicant does not appear inadmissible or removable. In such cases, the Service will dismiss the application without prejudice so that it does not remain pending indefinitely with the Service. If the application were to remain pending indefinitely with the Service, the applicant would continue to be eligible for employment authorization, even though he or she was not pursuing the application. To avoid such a procedural loophole, the Service must be able to dismiss the application. If the applicant still wishes to pursue relief under section 203 of NACARA and is otherwise still eligible to file for relief with the Service, he or she could file a new application.

Consequences for Failing to Bring an Interpreter

One commenter stated that the failure to bring an interpreter to the interview should not be treated as a failure to appear for the interview and that, instead, the case should be rescheduled.

As in the case of asylum interviews, the Service intends to include in the interview notice notification that the applicant is required to bring an interpreter to the interview if the applicant is not fluent in English. Therefore the applicant will be given notice of the need to bring a qualified interpreter to the interview.

It has been the practice of the Asylum Program to reschedule all asylum interviews in which an applicant fails, for the first time, to bring an interpreter to the interview or, for the first time, brings an incompetent interpreter to the interview. The Service intends to continue this practice with interviews conducted pursuant to NACARA, as long as resources permit the liberal rescheduling policy. However, to retain the administrative flexibility necessary to continue processing a large number of applications should a large number of applicants begin to appear for interviews without interpreters, the Department does not believe it appropriate to mandate such rescheduling by regulation.

Access to Interpreters

Several commenters requested that the Service provide Spanish speaking-asylum officers at various points in the NACARA interview and decision-issuing process to relieve applicants of the burden of having to provide interpreters and to help applicants understand the decisions they receive. The Service is unable to change the present requirement that an applicant provide his or her own interpreter if unable to proceed in English. The Service has neither the qualified staff nor the resources to provide Spanish-speaking asylum officers at all steps of the NACARA process.

F. Decisions by the Service

Concessions of Inadmissibility and Deportability

One commenter requested that the Service not ask a NACARA applicant to sign a concession of inadmissibility or deportability until the last stage of the decision-making process, after fingerprints have cleared. One commenter requested that the explanation given to the applicant regarding the consequences of certain decisions an applicant will need to make regarding concession of inadmissibility and deportability and whether to continue to pursue a pending asylum request should not be delayed until the day the applicant returns to receive the decision.

The Department agrees with these comments. Section 240.70(b) of the interim rule provides that, ''[i]f the Service has made a preliminary decision to grant the applicant suspension of deportation under this subpart, the applicant shall be notified of that decision and will be asked to sign an admission of deportability or inadmissibility.'' This is the last step before an individual is granted relief, because no preliminary decision may be made until after the fingerprints have been cleared. Pursuant to § 240.67(a) of the rule, an applicant subject to the fingerprinting requirements will be interviewed only after the individual has complied with the fingerprinting requirements, and the Service has received a definitive response from the FBI that a full criminal background check has been completed.

PART III, section (F) of the instructions to Form I–881 presently contains an explanation of the requirement that an applicant sign an admission of inadmissibility or deportability before he or she can be granted suspension of deportation or special rule cancellation of removal by the Service. The Service also intends to present the applicant with a further explanation of the requirement to admit inadmissibility or deportability, as well as the opportunity to continue to pursue a request for asylum or to withdraw the asylum application should the application for suspension or special rule cancellation be approved at the time of the interview. The Service will also continue to consider the feasibility of providing this important information to the applicant prior to the interview.

Timing of Approval of NACARA Application

Many commenters requested that the regulations permit an asylum officer to grant an application at the time of interview. The Department intends to do so in appropriate cases. The interim rule, at § 240.70(a), will permit an asylum officer to grant an application at the time of the interview. The Service will have the discretion to determine the circumstances under which it is appropriate for an asylum officer to grant an application at the time of the interview.

Notice of Reasons for Referral or Dismissal

Many commenters requested that the regulations require the Service to justify

the reason for not granting suspension of deportation or special rule cancellation of removal. One comment stated that the Service should, at a minimum, include in a decision a list of factors considered in evaluating whether removal would result in extreme hardship.

The Department agrees that the referral or dismissal letter served on an applicant should include notification of the reason or reasons for the decision, and the Service intends to include such notification in all referral and dismissal letters. The decision will not contain a list of all the factors considered in evaluating whether removal would result in extreme hardship. Rather, the contents of such letters will model the referral letters issued after an asylum interview, briefly indicating the basis for the decision. This process will allow the Service to adjudicate NACARA applications in an efficient and timely fashion, while also requiring the deciding officer to give the applicant an explanation for why the claim is being referred to the Immigration Court. Section 240.70(d) and (e) now provides that the applicant will be given written notice of the statutory or regulatory basis for the referral or dismissal.

Presumed Withdrawal of an Asylum Application

Several commenters requested that the proposed revisions to 8 CFR 208.14, relating to the presumption of abandonment of an asylum application when the applicant is granted legal permanent resident status, be revised to give an applicant granted adjustment of status to lawful permanent resident 60 days, rather than the proposed 30 days, to decide whether to pursue a pending asylum application, and that the regulations should also require the Service to provide written notice in Spanish and English advising the applicant of the deadline and its significance.

The revisions to 8 CFR 208.14 are primarily aimed at addressing those circumstances in which an applicant for asylum adjusts his or her status to that of lawful permanent resident by some other means while the asylum application is pending. The revised § 208.14 will not apply to the majority of applicants under section 203 of NACARA, because the vast majority of those applicants are eligible for benefits of the *ABC* settlement agreement. As such, the processing of their asylum applications is largely governed by the 1990 asylum regulations, which do not contain a similar provision allowing the Service to presume that an asylum application is abandoned. This revised provision will apply only to lawful permanent resident applicants who are not eligible for *ABC* benefits, such as those who adjust status under section 202 of NACARA or through other means such as relative petitions.

The Department believes that it is unnecessary to increase the notice period to 60 days. If an individual needs additional time to consult with counsel, he or she may submit a request for additional time. If an individual's application is presumed withdrawn, but the individual still wishes to pursue asylum in the United States, even though he or she has lawful permanent resident status, the individual may submit a new asylum application to the Service for adjudication.

The Department agrees that the written notice should be required and has incorporated that requirement into § 208.14. However, the notice will not be translated into any other languages.

Distinction Between ABC and NACARA Adjudications

Several commenters stated that the regulations should recognize the Service's obligations under paragraph 15 of the *ABC* settlement agreement regarding preliminary asylum recommendations and should apply those provisions to all NACARA beneficiaries.

Paragraph 15 of the *ABC* settlement agreement provides very specific procedural requirements for making preliminary and final decisions on eligibility for asylum. For example, it specifies procedures for sending asylum assessments to the Department of State and requires the Service to provide a written notice of intent to deny an asylum application prior to issuing a final adverse decision. It is limited to asylum applicants who meet the criteria for eligibility for *ABC* benefits as provided in the settlement and is not relevant to the adjudication of applications under section 203 of NACARA, which is an application for a completely separate form of relief. While the interview for asylum eligibility and relief under NACARA may be combined, the decision-making process is distinct. The parties to the settlement agreement—the Service, EOIR and the Department of State—remain bound by the provisions of the settlement agreement and will continue to comply with all aspects of the settlement agreement in adjudicating asylum requests filed by *ABC* class members who are eligible for the benefits of the settlement agreement. The Department declines to incorporate the settlement agreement requirements governing the processing of *ABC* asylum applications into regulations governing procedures for the unrelated benefit of suspension of deportation and special rule cancellation of removal, or extending the *ABC* settlement agreement provisions governing asylum adjudication to applicants not covered by the settlement agreement.

Effect of Mandatory Pick-up on ABC Agreement

Several commenters assert that § 240.70(a), which requires applicants to return to an asylum office to receive a decision, violates the *ABC* settlement agreement because the settlement agreement does not require this.

The Department disagrees with this interpretation of the *ABC* settlement agreement. First, § 240.70(a) provides for service of a decision on eligibility for suspension of deportation or special rule cancellation of removal, and the *ABC* settlement agreement has no bearing on any process relating to Service adjudication of a request for suspension of deportation or special rule cancellation of removal. Second, neither the *ABC* settlement agreement nor the 1990 regulations, which also govern adjudication of *ABC* asylum applications, contains any provisions governing the service of a final decision on eligibility for asylum. Therefore, the Department believes that requiring an *ABC* applicant to return to the Asylum Office to receive an asylum decision would not be inconsistent with the settlement agreement. It would make little sense to require an individual to return to an Asylum Office to receive a decision on the NACARA application, but to prohibit the Asylum Office from informing the applicant of any final or preliminary decision on the asylum application while the applicant is at the Asylum Office. It would be much more efficient for both the Service and the applicant for the Service to deliver both decisions at once, where appropriate.

Restriction of Asylum Officer's Authority

Another commenter requested that the regulations provide that no final decision may be made by a Service officer, but can be made only by an Immigration Court. The commenter also stated that applicants must be made aware of the right to appeal a decision to the Board of Immigration Appeals.

The Department declines to adopt the recommendation that the regulations require that the final decision can be made only by an Immigration Court. If an asylum officer were not given authority to issue a final grant of suspension of deportation or special

rule cancellation of removal, there would be no benefit to allowing NACARA beneficiaries to apply with the Service for relief under section 203 of NACARA. The rule, however, does not give asylum officers authority to deny relief under section 203 of NACARA. If an asylum officer determines that an applicant is not eligible for a grant of suspension of deportation or special rule cancellation of removal and has not been granted asylum, the asylum officer must refer the application to an Immigration Court for adjudication. The exception would be those cases in which the applicant does not appear inadmissible or deportable and therefore could not be placed in removal proceedings. In such rare instances, the application would be dismissed.

The Department does not believe it is necessary for the rule to require that an applicant be made aware of the right to appeal a decision to the Board of Immigration Appeals, because 8 CFR 3.3 already provides that a party affected by a decision who is entitled to appeal an Immigration Court's decision to the Board of Immigration Appeals must be given notice of the right to appeal.

G. Miscellaneous Comments

Employment Authorization

Several commenters requested that the regulations specify where to file an application for employment authorization. The Department declines to provide this procedural information in the regulation. It is more appropriate that such procedural information, which is subject to change, be provided in the instructions to the application used to obtain the benefit. The instructions to the Form I–881 have been amended to state that an individual who does not have employment authorization and is eligible for employment authorization under 8 CFR 274.12(c)(10) should submit a completed Form I–765, with his or her completed Form I–881, to the Service Center that has jurisdiction over the Form I–881.

Extension of Deadline to Perfect NACARA Motion to Reopen

One commenter requested that the deadline to complete a motion to reopen be extended. On January 14, 1999, EOIR announced that it would extend the deadline for supplementing NACARA motions to reopen that were submitted on or before September 11, 1998. Under 8 CFR 3.43, as amended, NACARA motions to reopen must be supplemented with an application and supporting documents no later than 150 days after the effective date of the rule implementing section 203 of NACARA. 64 FR 13663 (March 22, 1999). Because the statute limited the initial filing period, the September 11, 1998, deadline for submitting initial motions cannot be extended. The Service has agreed to consider joining in motions to reopen in certain cases for NACARA applicants who were prima facie eligible for relief as of September 11, 1998, and who can establish a valid reason for failing to submit a timely motion to reopen.

H. Comments on the Form I–881 and Instructions

The public comments on the Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal, ranged from requests for simple word changes and comments of significant complexity, to a request that the Form EOIR–40 be used for NACARA applications instead of the Form I–881.

In response to the comment that suggested that the Form EOIR–40 be used for NACARA applications for suspension of deportation or special rule cancellation of removal instead of creating a new form, the Department believes that the Form I–881 is useful in (1) drawing out the basis for an applicant's claim to eligibility for NACARA section 203 relief, and (2) providing NACARA applicants who may submit the application for suspension of deportation or special rule cancellation of removal to the Service without the aid of an attorney or representative some guidance as to the type of factors that are relevant to the determination of extreme hardship. Despite the decision by the Attorney General to establish a rebuttable presumption of extreme hardship for certain NACARA beneficiaries, applicants will still need to provide responses to the questions in the Form I–881 directed towards the extreme hardship issue in order to qualify for suspension of deportation or special rule cancellation of removal.

Certain Changes to the form or instructions reflect substantive changes made to the regulation. For example, both PART 1(C) of the Instructions and Part 2(b) of the Form I–881 are amended to read ''A Guatemalan or Salvadoran national who filed an application for asylum on or before April 1, 1990,'' in light of the Department's decision, previously discussed, to adopt a broader interpretation of the eligibility language in section 309(c)(5)(C)(i)(II) of IIRIRA, as added by section 203 of NACARA. The Department has deleted language that limited eligibility to those Guatemalan or Salvadoran nationals who filed their asylum applications by April 1, 1990, directly with the Service.

In response to several comments, PART II (C) of the Instructions is amended to indicate the fee required when submitting the Form I–881. Many comments also requested that the Service accept a Form EOIR–40 instead of a Form I–881 when an applicant has already filed the Form EOIR–40 with EOIR. As stated earlier, the Service will accept a previously filed Form EOIR–40 as a NACARA application, so long as the applicant fills out page 1 of the Form I–881 and attaches it to the front of the Form EOIR–40 for data entry purposes. At PART III(C) and PART IV, the Instructions are amended to clarify when the Form I–881 must be used and when the Form EOIR–40 may be used.

Several commenters requested that the language in the Instructions and the Form I–881 be amended regarding the type of evidence of tax payments that should be submitted, and asked that evidence of tax payments be accepted at the interview or hearing and not required to be attached to the application, pointing out the difficulty of obtaining this information quickly. PART V of the Instructions and Part 4, question 4 of the Form I–881 now provide that an applicant may submit any evidence of filing a tax return, including Internal Revenue Service computer printouts, and does not specify that the evidence should be a tax return. The Instructions indicate that the Form I–881 may be supplemented at the time of interview or hearing. The Department declines to amend this section or other sections that request documentation be attached to the Form I–881, because the Service Center will not reject the application of an applicant who does not have records of tax payments or other documentation at the time he or she submits the Form I–881, and the applicant may submit this information at the time of the interview or hearing.

At PART VI of the Instructions for the Form I–881, language has been added in response to a commenter requesting information on where a person should apply for employment authorization. The Instructions now note that an individual who wishes to work, who does not have employment authorization, and is eligible for employment authorization under 8 CFR 274.12(c)(10), should submit a completed Form I–765 with his or her completed Form I–881 to the Service Center that has jurisdiction over the Form I–881.

Part 4 of the Form I–881 includes a change in the order of the subdivisions in that Part in response to a number of

comments requesting a more logical flow of the elicited information. Several other changes have been made in Part 4 of the Form I–881 in response to comments. Section 1 has been amended to clarify that periods of ''unpaid employment'' may include work as a homemaker, intern, etc. In section 2, the order of the types of assets has been changed. In response to a number of comments, the term ''motor vehicles'' replaces ''autos,'' and a column for spouse's assets is now included. Also, the section now requests that information on assets owned by ''self'' include those assets jointly owned with ''spouse or others.''

Several commenters urged that the question relating to receipt of public benefits, contained at Part 4, question 3 of the form, be deleted or limited to requesting information regarding only the receipt of cash benefits. The commenters stated that the case law permits but does not require that the receipt of public benefits be considered as a discretionary factor. The commenters argued that the presence of such a question on the form would have a chilling effect on the legitimate access and use of programs promoting public health and well-being by NACARA beneficiaries and their United States citizen family members.

The Department initially included the question on the form to avoid surprise to an applicant who might be asked about receipt of public benefits at the hearing or interview, and to give the applicant an opportunity to prepare a statement of the circumstances that led to the receipt of public benefits. However, in light of forthcoming guidance from the Department regarding the broader public charge issues, the question will be deleted from the Form I–881. Omission of the question, however, does not mean that an adjudicator cannot raise the issue in the course of an interview or hearing in appropriate cases. In the context of suspension of deportation or cancellation of removal, questions about receipt of public benefits are not necessarily meant to draw inferences against an applicant. A full and accurate understanding of an applicant's financial condition is always relevant to the determination to grant or deny relief. In light of the ongoing review by the Department, and the possibility that this question may discourage people from applying for benefits to which they are entitled, the Department has decided that the limited value of reducing the element of surprise is outweighed by broader public health concerns.

Parts 6 and 7 of the Form I–881, which request information about the applicant's parents and children, have been switched from their previous order, as requested by several commenters. In addition, the request for information about children's weekly earnings and whether the applicant supports his or her children financially has been deleted as overly burdensome. Question 3 in this Part, which elicits information about the applicant's support of family members, has been deleted. Also, Part 8 of the previous version of the Form I–881, where information about the applicant's community ties was requested, has been deleted, and a question regarding community ties has been incorporated into Part 9 on Extreme Hardship.

In response to a number of suggestions to shorten or simplify the hardship section of the Form I–881, the spaces between questions have been eliminated and the form requests the applicant to provide explanations to the answers on a separate sheet of paper. Additionally, as requested in some comments, this section has been modified to request ''yes/no'' answers to questions regarding extreme hardship. The questions elicit the same type of information as the questions on the original version of the Form I–881. Question 11 has been added to Part 9 of the Form I–881 to elicit information regarding community ties. Finally, this part explains that applicants who meet the eligibility requirements for NACARA suspension of deportation or special rule cancellation of removal listed in (a) or (b) of Part 2 on page 1, and thus are entitled to a rebuttable presumption of extreme hardship, do not need to submit documentation with their application to support their claim of extreme hardship. This is also stated in PART II(A) and PART V of the Instructions.

At PART II(A), the Instructions are amended to include a reference to ''page 8'' of the form, with the explanation that page 8 may be used as an additional sheet. Page 8 of the Form I–881 has been added to provide applicants with a blank sheet of paper to allow them to supplement or explain responses provided in other parts of the form, such as the hardship section previously described. In addition, Part 10 of the previous version of Form I–881, Miscellaneous Information, is now Part 8.

Requested Changes not Incorporated into the Form I–881

Additional lines for requested information have been added, and the order of questions has been changed where possible and appropriate, as requested by the commenters and explained previously. However, due to space limitations and in an effort to avoid making the form longer, not all requests to move sections or add spaces could be accommodated. For example, the number of lines provided to list places of residence has not been increased (an applicant must attach additional sheets if more space is needed to complete the section).

One commenter requested that a row for debts and other liabilities be added to the information requested about an applicant's assets in Part 4, section 2 of the form. The Department does not believe it is necessary to add a row requesting information about debts and liabilities of an applicant. When requesting information about the value of any motor vehicles or real estate owned by applicant and his or her spouse, Part 4, section 2 of the Form I–881 specifically asks that the value listed should be ''minus any amount owed'' on the property. It is sufficient that the individual list only the equity owned in the assets.

One commenter suggested that the introductory paragraph in Part 9 of the form be changed to make it easier for the applicant to complete the form. This commenter proposed that the introductory paragraph list the factors considered in establishing extreme hardship, followed by a single open-ended question asking for an explanation of all hardship factors relevant to the applicant's claim.

As noted previously, Part 9 now asks for responses to ''yes/no'' questions and explanations for those responses. Each question elicits information about a particular hardship factor, except for the last question in the section, which asks for other hardship the applicant would suffer if removed from the United States. Specific questions eliciting information about each particular extreme hardship factor alert the applicant to the kind of information that is relevant to demonstrate extreme hardship. The last question is open-ended and gives the applicant the opportunity to expand upon circumstances not covered by previous questions. The Department believes that the present format, where particular hardship questions are followed by an open-ended hardship question, best elicits information required for the adjudicator to make a determination on extreme hardship.

Several commenters argued that the information requested in Part 8 of the form, Miscellaneous Information, should be limited to the applicable statutory period of good moral character.

As explained in an earlier response to comments on the form that is on file with the Director, Policy Directives and Instructions Branch, questions that request information beyond the 7-year and 10-year periods for continuous physical presence are relevant to the adjudication of suspension of deportation and special rule cancellation of removal claims, because this information may be considered in the exercise of discretion. Other questions in this part relate to eligibility requirements that have no time limits. For example, there are questions in the Miscellaneous Information part of the form relating to whether the applicant has been admitted to the United States as a crewman after June 30, 1964, or has had the status of exchange visitor. Because the statute explicitly excludes individuals who obtained such status from a grant of suspension of deportation or cancellation of removal, this information is relevant to the eligibility determination, regardless of whether the applicant held such status more than 10 years ago.

Finally, several commenters noted that the Department's estimate of 12 hours to complete the form would prove inadequate. Because this is a new form, it is difficult to estimate the number of hours needed to complete it. As noted in the earlier response (and because of a wide discrepancy in completion times in our sample study), the time to complete this form will vary significantly. For those applicants who have readily available required documents and information, the time to complete the form will be substantially less than the 12-hour estimate. For some applicants, the time to gather the information for the form will be significantly greater than the 12-hour estimate. For the vast majority of the individuals who do not need to provide documentation to demonstrate extreme hardship, the present time estimate seems sufficient.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because of the following reason: This rule would provide new administrative procedures for the Service to consider applications from certain Guatemalans, Salvadorans, nationals of former Soviet bloc countries, and their qualified relatives who are applying for suspension of deportation or special rule cancellation of removal and, if granted, to adjust their status to that of lawful permanent resident. It will have no effect on small entities, as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866: Regulatory Planning and Review

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

Executive Order 12612: Federalism

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National government and the States, or on the distribution of power and responsibility among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988: Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Family Assessment

The Attorney General has reviewed this regulation and has determined that it may affect family well-being as that term is defined in section 654 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277, Div. A. Accordingly, the Attorney General has assessed this action in accordance with the criteria specified in section 654(c)(1). In this rule, the factors that may be considered in evaluating whether deportation or removal would result in extreme hardship include the safety and stability of the family.

Paperwork Reduction Act

This rule requires applicants to provide biographical data and information regarding eligibility for relief under section 203 of NACARA on Form I–881. This requirement is considered an information collection that is subject to review by OMB under the Paperwork Reduction Act of 1995 (PRA). The Service issued a 60-day notice in the **Federal Register** on May 8, 1998, at 63 FR 25523, requesting comments on this new information collection. No comments were received during that initial 60-day comment period. On July 23, 1998, the Service issued a notice in the **Federal Register**, at 63 FR 39596, extending the comment period by 30 days. On November 24, 1998, the Service issued a 30-day notice in the **Federal Register**, at 63 FR 64895, and OMB subsequently approved the Form I–881. The OMB control number for this collection is contained in 8 CFR 299.5, Display of control numbers. As discussed in the supplementary information to this rule, comments were received and considered, and certain changes were made to the proposed Form I–881 in light of those comments.

Since a delay in issuing this interim rule could create a further delay with respect to allowing aliens to apply for relief under section 203 of NACARA, the Service is using emergency review procedures for review and clearance by OMB in accordance with the PRA. If granted, the emergency approval is only valid for 180 days. Comments concerning the information collection should be directed to: Office of Information and Regulatory Affairs, OMB Desk Officer for the Immigration and Naturalization Service, Office of Management and Budget, Room 10235, Washington, DC 20503.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations

(Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Immigration.

8 CFR Part 246

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.1, the last sentence in paragraph (g)(3)(ii) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(g) * * *

(3) * * *

(ii) *Asylum officers.* * * * Asylum officers are delegated the authority to hear and adjudicate credible fear of persecution determinations under section 235(b)(1)(B) of the Act, applications for asylum and for withholding of removal, as provided under 8 CFR part 208, and applications for suspension of deportation and special rule cancellation of removal, as provided under 8 CFR part 240, subpart H.

* * * * *

3. In § 103.7, paragraph (b)(1) is amended by adding the entry for ''Form I–881'' to the listing of fees, in proper numerical sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–881. For filing an application for suspension of deportation or special rule cancellation of removal (pursuant to section 203 of Public Law 105–100):

— $215 for adjudication by the Service, except that the maximum amount payable by family members (related as husband, wife, unmarried child under 21, unmarried son, or unmarried daughter) who submit applications at the same time shall be $430.

— $100 for adjudication by the Immigration Court (a single fee of $100 will be charged whenever applications are filed by two or more aliens in the same proceedings). The $100 fee is not required if the Form I–881 is referred to the Immigration Court by the Service.

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

4. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282, 8 CFR part 2.

5. Section 208.14 is amended by revising the section heading and by adding a new paragraph (f), to read as follows:

§ 208.14 Approval, denial, referral, or dismissal of application.

* * * * *

(f) If an asylum applicant is granted adjustment of status to lawful permanent resident, the Service may provide written notice to the applicant that his or her asylum application will be presumed abandoned and dismissed without prejudice, unless the applicant submits a written request within 30 days of the notice, that the asylum application be adjudicated. If an applicant does not respond within 30 days of the date the written notice was sent or served, the Service may presume the asylum application abandoned and dismiss it without prejudice.

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

6. The authority citation for part 240 is revised to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105-277 (112 Stat. 2681); 8 CFR part 2.

In subpart B, § 240.20 is amended by adding a new paragraph (c), to read as follows:

§ 240.20 Cancellation of removal and adjustment of status under section 240A of the Act.

* * * * *

(c) For cases raised under section 240A(b)(2) of the Act, extreme hardship shall be determined as set forth in § 240.58 of this part.

8. In subpart F, a new § 240.58 is added to read as follows:

§ 240.58 Extreme hardship.

(a) To be eligible for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, the alien must meet the requirements set forth in the Act, which include a showing that deportation would result in extreme hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States, or an alien lawfully admitted for permanent residence. Extreme hardship is evaluated on a case-by-case basis, taking into account the particular facts and circumstances of each case. Applicants are encouraged to cite and document all applicable factors in their applications, as the presence or absence of any one factor may not be determinative in evaluating extreme hardship. Adjudicators should weigh all relevant factors presented and consider them in light of the totality of the circumstances, but are not required to offer an independent analysis of each listed factor when rendering a decision. Evidence of an extended stay in the United States without fear of deportation and with the benefit of work authorization, when present in a particular case, shall be considered relevant to the determination of whether deportation will result in extreme hardship.

(b) To establish extreme hardship, an applicant must demonstrate that deportation would result in a degree of hardship beyond that typically associated with deportation. Factors that may be considered in evaluating whether deportation would result in extreme hardship to the alien or to the alien's qualified relative include, but are not limited to, the following:

(1) The age of the alien, both at the time of entry to the United States and at the time of application for suspension of deportation;

(2) The age, number, and immigration status of the alien's children and their ability to speak the native language and to adjust to life in the country of return;

(3) The health condition of the alien or the alien's children, spouse, or parents and the availability of any required medical treatment in the country to which the alien would be returned;

(4) The alien's ability to obtain employment in the country to which the alien would be returned;

(5) The length of residence in the United States;

(6) The existence of other family members who are or will be legally residing in the United States;

(7) The financial impact of the alien's departure;

(8) The impact of a disruption of educational opportunities;

(9) The psychological impact of the alien's deportation;

(10) The current political and economic conditions in the country to which the alien would be returned;

(11) Family and other ties to the country to which the alien would be returned;

(12) Contributions to and ties to a community in the United States, including the degree of integration into society;

(13) Immigration history, including authorized residence in the United States; and

(14) The availability of other means of adjusting to permanent resident status.

(c) For cases raised under section 244(a)(3) of the Act, the following factors should be considered in addition to, or in lieu of, the factors listed in paragraph (b) of this section.

(1) The nature and extent of the physical or psychological consequences of abuse;

(2) The impact of loss of access to the United States courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, maintenance, child custody, and visitation);

(3) The likelihood that the batterer's family, friends, or others acting on behalf of the batterer in the home country would physically or psychologically harm the applicant or the applicant's child(ren);

(4) The applicant's needs and/or needs of the applicant's child(ren) for social, medical, mental health or other supportive services for victims of domestic violence that are unavailable or not reasonably accessible in the home country;

(5) The existence of laws and social practices in the home country that punish the applicant or the applicant's child(ren) because they have been victims of domestic violence or have taken steps to leave an abusive household; and

(6) The abuser's ability to travel to the home country and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's children from future abuse.

(d) Nothing in § 240.58 shall be construed as creating any right, interest, or entitlement that is legally enforceable by or on behalf of any party against the United States or its agencies, officers, or any other person.

9. Part 240 is amended by adding Subpart H to read as follows:

Subpart H—Applications for Suspension of Deportation or Special Rule Cancellation of Removal Under Section 203 of Pub. L. 105–100

Sec.

Subpart H—Applications for Suspension of Deportation or Special Rule Cancellation of Removal Under Section 203 of Pub. L. 105–100

§ 240.60 Definitions.

As used in this subpart the term:

ABC means *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991).

ABC class member refers to:

(1) Any Guatemalan national who first entered the United States on or before October 1, 1990; and

(2) Any Salvadoran national who first entered the United States on or before September 19, 1990.

Asylum application pending adjudication by the Service means any asylum application for which the Service has not served the applicant with a final decision or which has not been referred to the Immigration Court.

Filed an application for asylum means the proper filing of a principal asylum application or filing a derivative asylum application by being properly included as a dependent spouse or child in an asylum application pursuant to the regulations and procedures in effect at the time of filing the principal or derivative asylum application.

IIRIRA means the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Pub. L. 104–208 (110 Stat. 3009–625).

NACARA means the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as title II of Pub. L. 105–100 (111 Stat. 2160, 2193), as amended by the Technical Corrections to the Nicaraguan Adjustment and Central American Relief Act, Pub. L. 105–139 (111 Stat. 2644).

Registered ABC class member means an ABC class member who:

(1) In the case of an *ABC* class member who is a national of El Salvador, properly submitted an ABC registration form to the Service on or before October 31, 1991, or applied for temporary protected status on or before October 31, 1991; or

(2) In the case of an *ABC* class member who is a national of Guatemala, properly submitted an *ABC* registration form to the Service on or before December 31, 1991.

§ 240.61 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart H applies to the following aliens:

(1) A registered *ABC* class member who has not been apprehended at the time of entry after December 19, 1990;

(2) A Guatemalan or Salvadoran national who filed an application for asylum with the Service on or before April 1, 1990, either by filing an application with the Service or filing the application with the Immigration Court and serving a copy of that application on the Service.

(3) An alien who entered the United States on or before December 31, 1990, filed an application for asylum on or before December 31, 1991, and, at the time of filing the application, was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia;

(4) An alien who is the spouse or child of an individual described in paragraph (a)(1), (a)(2), or (a)(3) of this section at the time a decision is made to suspend the deportation, or cancel the removal, of the individual described in paragraph (a)(1), (a)(2), or (a)(3) of this section;

(5) An alien who is:

(i) The unmarried son or unmarried daughter of an individual described in paragraph (a)(1), (a)(2), or (a)(3) of this section and is 21 years of age or older at the time a decision is made to suspend the deportation, or cancel the removal, of the parent described in paragraph (a)(1), (a)(2), or (a)(3) of this section; and

(ii) Entered the United States on or before October 1, 1990.

(b) This subpart H does not apply to any alien who has been convicted at any time of an aggravated felony, as defined in section 101(a)(43) of the Act.

§ 240.62 Jurisdiction.

(a) *Office of International Affairs.* Except as provided in paragraph (b) of this section, the Office of International Affairs shall have initial jurisdiction to grant or refer to the Immigration Court or Board an application for suspension of deportation or special rule cancellation of removal filed by an alien described in § 240.61, provided:

(1) In the case of a national of El Salvador described in § 240.61(a)(1), the alien filed a complete asylum application on or before January 31, 1996 (with an administrative grace period extending to February 16, 1996), or otherwise met the asylum application filing deadline pursuant to the *ABC* settlement agreement, and the application is still pending adjudication by the Service;

(2) In the case of a national of Guatemala described in § 240.61(a)(1), the alien filed a complete asylum application on or before January 3, 1995, or otherwise met the asylum application filing deadline pursuant to the *ABC* settlement agreement, and the application is still pending adjudication by the Service;

(3) In the case of an individual described in § 240.61(a)(2) or (3), the individual's asylum application is pending adjudication by the Service;

(4) In the case of an individual described in § 240.61(a)(4) or (5), the individual's parent or spouse has an application pending with the Service under this subpart H or has been granted relief by the Service under this subpart.

(b) *Immigration Court.* The Immigration Court shall have exclusive jurisdiction over an application for suspension of deportation or special rule cancellation of removal filed pursuant to section 309(f)(1)(A) or (B) of IIRIRA, as amended by NACARA, by an alien who has been served Form I–221, Order to Show Cause, or Form I–862, Notice to Appear, after a copy of the charging document has been filed with the Immigration Court, unless the alien is covered by one of the following exceptions:

(1) *Certain ABC class members.* (i) The alien is a registered *ABC* class member for whom proceedings before the Immigration Court or the Board have been administratively closed or continued (including those aliens who had final orders of deportation or removal who have filed and been granted a motion to reopen as required under 8 CFR 3.43);

(ii) The alien is eligible for benefits of the *ABC* settlement agreement and has not had a *de novo* asylum adjudication pursuant to the settlement agreement; and

(iii) The alien has not moved for and been granted a motion to recalendar proceedings before the Immigration Court or the Board to request suspension of deportation.

(2) *Spouses, children, unmarried sons, and unmarried daughters.* (i) The alien is described in § 240.61(a) (4) or (5);

(ii) The alien's spouse or parent is described in § 240.61(a)(1), (a)(2), or (a)(3) and has a Form I–881 pending with the Service; and

(iii) The alien's proceedings before the Immigration Court have been administratively closed, or the alien's proceedings before the Board have been continued, to permit the alien to file an application for suspension of deportation or special rule cancellation of removal with the Service.

§ 240.63 Application process.

(a) *Form and Fees.* Except as provided in paragraph (b) of this section, the application must be made on a Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100 (NACARA)), and filed in accordance with the instructions for that form. An applicant who submitted to EOIR a completed Form EOIR–40, Application for Suspension of Deportation, before the effective date of the Form I–881 may apply with the Service by submitting the completed Form EOIR–40 attached to a completed first page of the Form I–881. Each application must be filed with the filing and fingerprint fees as provided in § 103.7(b)(1) of this chapter, or a request for fee waiver, as provided in § 103.7(c) of this chapter. The fact that an applicant has also applied for asylum does not exempt the applicant from the fingerprinting fees associated with the Form I–881.

(b) *Applications filed with EOIR.* If jurisdiction rests with the Immigration Court under § 260.62(b), the application must be made on the Form I–881, if filed subsequent to June 21, 1999. The application form, along with any supporting documents, must be filed with the Immigration Court and served on the Service's district counsel in accordance with the instructions on or accompanying the form. Applications for suspension of deportation or special rule cancellation of removal filed prior to June 21, 1999 shall be filed on Form EOIR–40.

(c) *Applications filed with the Service.* If jurisdiction rests with the Service under § 240.62(a), the Form I–881 and supporting documents must be filed at the appropriate Service Center in accordance with the instructions on or accompanying the form.

(d) *Conditions and consequences of filing.* Applications filed under this section shall be filed under the following conditions and shall have the following consequences:

(1) The information provided in the application may be used as a basis for the initiation of removal proceedings, or to satisfy any burden of proof in exclusion, deportation, or removal proceedings;

(2) The applicant and anyone other than a spouse, parent, son, or daughter of the applicant who assists the applicant in preparing the application must sign the application under penalty of perjury. The applicant's signature establishes a presumption that the applicant is aware of the contents of the application. A person other than a relative specified in this paragraph who assists the applicant in preparing the application also must provide his or her full mailing address;

(3) An application that does not include a response to each of the questions contained in the application, is unsigned, or is unaccompanied by the required materials specified in the instructions to the application is incomplete and shall be returned by mail to the applicant within 30 days of receipt of the application by the Service; and

(4) Knowing placement of false information on the application may subject the person supplying that information to criminal penalties under title 18 of the United States Code and to civil penalties under section 274C of the Act.

§ 240.64 Eligibility—general.

(a) *Burden and standard of proof.* The burden of proof is on the applicant to establish by a preponderance of the evidence that he or she is eligible for suspension of deportation or special rule cancellation of removal and that discretion should be exercised to grant relief.

(b) *Calculation of continuous physical presence and certain breaks in presence.* For purposes of calculating continuous physical presence under this section, section 309(c)(5)(A) of IIRIRA and section 240A(d)(1) of the Act shall not apply to persons described in § 240.61. For purposes of this subpart H, a single absence of 90 days or less or absences

which in the aggregate total no more than 180 days shall be considered brief.

(1) For applications for suspension of deportation made under former section 244 of the Act, as in effect prior to April 1, 1997, the burden of proof is on the applicant to establish that any breaks in continuous physical presence were brief, casual, and innocent and did not meaningfully interrupt the period of continuous physical presence in the United States. For purposes of evaluating whether an absence is brief, single absences in excess of 90 days, or absences that total more than 180 days in the aggregate will be evaluated on a case-by-case basis. An applicant must establish that any absence from the United States was casual and innocent and did not meaningfully interrupt the period of continuous physical presence.

(2) For applications for special rule cancellation of removal made under section 309(f)(1) of IIRIRA, as amended by NACARA, the applicant shall be considered to have failed to maintain continuous physical presence in the United States if he or she has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days. The applicant must establish that any period of absence less than 90 days was casual and innocent and did not meaningfully interrupt the period of continuous physical presence in the United States.

(3) For all applications made under this subpart, a period of continuous physical presence is terminated whenever an alien is removed from the United States under an order issued pursuant to any provision of the Act or the alien has voluntarily departed under the threat of deportation or when the departure is made for purposes of committing an unlawful act.

(4) The requirements of continuous physical presence in the United States under this subpart shall not apply to an alien who:

(i) Has served for a minimum period of 24 months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and

(ii) At the time of the alien's enlistment or induction, was in the United States.

(c) *Factors relevant to extreme hardship.* Except as described in paragraph (d) of this section, extreme hardship shall be determined as set forth in § 240.58.

(d) *Rebuttable presumption of extreme hardship for certain classes of aliens.* (1) *Presumption of extreme hardship.* An applicant described in paragraphs (a)(1) or (a)(2) of § 240.61who has submitted a completed Form I–881 to either the Service or the Immigration Court shall be presumed to have established that deportation or removal from the United States would result in extreme hardship to the applicant or to his or her spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(2) *Rebuttal of presumption.* A presumption of extreme hardship as described in paragraph (d)(1) of this section shall be rebutted if the evidence in the record establishes that it is more likely than not that neither the applicant nor a qualified relative would suffer extreme hardship if the applicant were deported or removed from the United States. In making such a determination, the adjudicator shall consider relevant factors, including those listed in § 240.58.

(3) *Burden of proof.* In those cases where a presumption of extreme hardship applies, the burden of proof shall be on the Service to establish that it is more likely than not that neither the applicant nor a qualified relative would suffer extreme hardship if the applicant were deported or removed from the United States.

(4) *Effect of rebuttal.* (i) A determination that it is more likely than not that neither the applicant nor a qualified relative would suffer extreme hardship if the applicant were deported or removed from the United States shall be grounds for referral to the Immigration Court or dismissal of an application submitted initially to the Service. The applicant is entitled to a *de novo* adjudication and will again be considered to have a presumption of extreme hardship before the Immigration Court.

(ii) If the Immigration Court determines that extreme hardship will not result from deportation or removal from the United States, the application will be denied.

§ 240.65 Eligibility for suspension of deportation.

(a) *Applicable statutory provisions.* To establish eligibility for suspension of deportation under this section, the applicant must be an individual described in § 240.61; must establish that he or she is eligible under former section 244 of the Act, as in effect prior to April 1, 1997; must not be subject to any bars to eligibility in former section 242B(e) of the Act, as in effect prior to April 1, 1997, or any other provisions of law; and must not have been convicted of an aggravated felony or be an alien described in former section 241(a)(4)(D) of the Act, as in effect prior to April 1, 1997 (relating to Nazi persecution and genocide).

(b) *General rule.* To establish eligibility for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, an alien must be deportable under any law of the United States, except the provisions specified in paragraph (c) of this section, and must establish:

(1) The alien has been physically present in the United States for a continuous period of not less than 7 years immediately preceding the date the application was filed;

(2) During all of such period the alien was and is a person of good moral character; and

(3) The alien's deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Aliens deportable on criminal or certain other grounds.* To establish eligibility for suspension of deportation under former section 244(a)(2) of the Act, as in effect prior to April 1, 1997, an alien who is deportable under former section 241(a) (2), (3), or (4) of the Act, as in effect prior to April 1, 1997 (relating to criminal activity, document fraud, failure to register, and security threats), must establish that:

(1) The alien has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status constituting a ground for deportation;

(2) The alien has been and is a person of good moral character during all of such period; and

(3) The alien's deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien, or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) *Battered spouses and children.* To establish eligibility for suspension of deportation under former section 244(a)(3) of the Act, as in effect prior to April 1, 1997, an alien must be deportable under any law of the United States, except under former section 241(a)(1)(G) of the Act, as in effect prior to April 1, 1997 (relating to marriage fraud), and except under the provisions specified in paragraph (c) of this section, and must establish that:

(1) The alien has been physically present in the United States for a continuous period of not less than 3

years immediately preceding the date the application was filed;

(2) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent); and

(3) During all of such time in the United States the alien was and is a person of good moral character; and

(4) The alien's deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's parent or child.

§ 240.66 Eligibility for special rule cancellation of removal.

(a) *Applicable statutory provisions.* To establish eligibility for special rule cancellation of removal, the applicant must show he or she is eligible under section 309(f)(1) of IIRIRA, as amended by section 203 of NACARA. The applicant must be described in § 240.61, must be inadmissible or deportable, must not be subject to any bars to eligibility in sections 240(b)(7), 240A(c), or 240B(d) of the Act, or any other provisions of law, and must not have been convicted of an aggravated felony or be an alien described in section 241(b)(3)(B)(I) of the Act (relating to persecution of others).

(b) *General rule.* To establish eligibility for special rule cancellation of removal under section 309(f)(1)(A) of IIRIRA, as amended by section 203 of NACARA, the alien must establish that:

(1) The alien is not inadmissible under section 212(a)(2) or (3) or deportable under section 237(a)(2), (3) or (4) of the Act (relating to criminal activity, document fraud, failure to register, and security threats);

(2) The alien has been physically present in the United States for a continuous period of 7 years immediately preceding the date the application was filed;

(3) The alien has been a person of good moral character during the required period of continuous physical presence; and

(4) The alien's removal from the United States would result in extreme hardship to the alien, or to the alien's spouse, parent or child who is a United States citizen or an alien lawfully admitted for permanent residence.

(c) *Aliens inadmissible or deportable on criminal or certain other grounds.* To establish eligibility for special rule cancellation of removal under section 309(f)(1)(B) of IIRIRA, as amended by section 203 of NACARA, the alien must be described in § 240.61 and establish that:

(1) The alien is inadmissible under section 212(a)(2) of the Act (relating to criminal activity), or deportable under paragraphs (a)(2) (other than section 237(a)(2)(A)(iii), relating to aggravated felony convictions), or (a)(3) of section 237 of the Act (relating to criminal activity, document fraud, and failure to register);

(2) The alien has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status constituting a ground for removal;

(3) The alien has been a person of good moral character during the required period of continuous physical presence; and

(4) The alien's removal from the United States would result in exceptional and extremely unusual hardship to the alien or to the alien's spouse, parent, or child, who is a United States citizen or an alien lawfully admitted for permanent residence.

§ 240.67 Procedure for interview before an asylum officer.

(a) *Fingerprinting requirements.* The Service will notify each applicant 14 years of age or older to appear for an interview only after the applicant has complied with fingerprinting requirements pursuant to § 103.2(e) of this subchapter, and the Service has received a definitive response from the FBI that a full criminal background check has been completed. A definitive response that a full criminal background check on an applicant has been completed includes:

(1) Confirmation from the FBI that an applicant does not have an administrative or criminal record;

(2) Confirmation from the FBI that an applicant has an administrative or a criminal record; or

(3) Confirmation from the FBI that two properly prepared fingerprint cards (Form FD–258) have been determined unclassifiable for the purpose of conducting a criminal background check and have been rejected.

(b) *Interview.* (1) The asylum officer shall conduct the interview in a non-adversarial manner and, except at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for suspension of deportation or special rule cancellation of removal. If the applicant has an asylum application pending with the Service, the asylum officer may also elicit information relating to the application for asylum in accordance with § 208.9 of this chapter. At the time of the interview, the applicant must provide complete information regarding the applicant's identity, including name, date and place of birth, and nationality, and may be required to register this identity electronically or through any other means designated by the Attorney General.

(2) The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence.

(3) An applicant unable to proceed with the interview in English must provide, at no expense to the Service, a competent interpreter fluent in both English and a language in which the applicant is fluent. The interpreter must be at least 18 years of age. The following individuals may not serve as the applicant's interpreter: the applicant's attorney or representative of record; a witness testifying on the applicant's behalf; or, if the applicant also has an asylum application pending with the Service, a representative or employee of the applicant's country of nationality, or, if stateless, country of last habitual residence. Failure without good cause to comply with this paragraph may be considered a failure to appear for the interview for purposes of § 240.68.

(4) The asylum officer shall have authority to administer oaths, verify the identity of the applicant (including through the use of electronic means), verify the identity of any interpreter, present and receive evidence, and question the applicant and any witnesses.

(5) Upon completion of the interview, the applicant or the applicant's representative shall have an opportunity to make a statement or comment on the evidence presented. The asylum officer may, in the officer's discretion, limit the length of such statement or comment and may require its submission in writing. Upon completion of the interview, and except as otherwise provided by the asylum officer, the applicant shall be informed of the requirement to appear in person to receive and to acknowledge receipt of the decision and any other accompanying material at a time and place designated by the asylum officer.

(6) The asylum officer shall consider evidence submitted by the applicant with the application, as well as any evidence submitted by the applicant before or at the interview. As a matter of discretion, the asylum officer may

grant the applicant a brief extension of time following an interview, during which the applicant may submit additional evidence.

§ 240.68 Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprinting.

(a) Failure to appear for a scheduled interview without prior authorization may result in dismissal of the application or waiver of the right to an adjudication by an asylum officer. A written request to reschedule will be granted if it is an initial request and is received by the Asylum Office at least 2 days before the scheduled interview date. All other requests to reschedule the interview, including those submitted after the interview date, will be granted only if the applicant has a reasonable excuse for not appearing, and the excuse was received by the Asylum Office in writing within a reasonable time after the scheduled interview date.

(b) Failure to comply with fingerprint processing requirements without reasonable excuse may result in dismissal of the application or waiver of the right to an adjudication by an asylum officer.

(c) Failure to appear shall be excused if the notice of the interview or fingerprint appointment was not mailed to the applicant's current address and such address had been provided to the Office of International Affairs by the applicant prior to the date of mailing in accordance with section 265 of the Act and Service regulations, unless the asylum officer determines that the applicant received reasonable notice of the interview or fingerprinting appointment.

§ 240.69 Reliance on information compiled by other sources.

In determining whether an applicant is eligible for suspension of deportation or special rule cancellation of removal, the asylum officer may rely on material described in § 208.12 of this chapter. Nothing in this subpart shall be construed to entitle the applicant to conduct discovery directed toward records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State.

§ 240.70 Decision by the Service.

(a) *Service of decision.* Unless the asylum officer has granted the application for suspension of deportation or special rule cancellation of removal at the time of the interview or as otherwise provided by an Asylum Office, the applicant will be required to return to the Asylum Office to receive service of the decision on the applicant's application. If the applicant does not speak English fluently, the applicant shall bring an interpreter when returning to the office to receive service of the decision.

(b) *Grant of suspension of deportation.* An asylum officer may grant suspension of deportation to an applicant eligible to apply for this relief with the Service who qualifies for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, who is not an alien described in former section 241(a)(4)(D) of the Act, as in effect prior to April 1, 1997, and who admits deportability under any law of the United States, excluding former section 241(a)(2), (3), or (4) of the Act, as in effect prior to April 1, 1997. If the Service has made a preliminary decision to grant the applicant suspension of deportation under this subpart, the applicant shall be notified of that decision and will be asked to sign an admission of deportability or inadmissibility. The applicant must sign the admission before the Service may grant the relief sought. If suspension of deportation is granted, the Service shall adjust the status of the alien to lawful permanent resident, effective as of the date that suspension of deportation is granted.

(c) *Grant of cancellation of removal.* An asylum officer may grant cancellation of removal to an applicant who is eligible to apply for this relief with the Service, and who qualifies for cancellation of removal under section 309(f)(1)(A) of IIRIRA, as amended by section 203 of NACARA, and who admits deportability under section 237(a), excluding paragraphs (2), (3), and (4), of the Act, or inadmissibility under section 212(a), excluding paragraphs (2) or (3), of the Act. If the Service has made a preliminary decision to grant the applicant cancellation of removal under this subpart, the applicant shall be notified of that decision and asked to sign an admission of deportability or inadmissibility. The applicant must sign the concession before the Service may grant the relief sought. If the Service grants cancellation of removal, the Service shall adjust the status of the alien to lawful permanent resident, effective as of the date that cancellation of removal is granted.

(d) *Referral of the application.* Except as provided in paragraphs (e) and (f) of this section, and unless the applicant is granted asylum or is in lawful immigrant or non-immigrant status, an asylum officer shall refer the application for suspension of deportation or special rule cancellation of removal to the Immigration Court for adjudication in deportation or removal proceedings, and will provide the applicant with written notice of the statutory or regulatory basis for the referral, if:

(1) The applicant is not clearly eligible for suspension of deportation under former section 244(a)(1) of the Act as in effect prior to April 1, 1997, or for cancellation of removal under section 309(f)(1)(A) of IIRIRA, as amended by NACARA;

(2) The applicant does not appear to merit relief as a matter of discretion;

(3) The applicant appears to be eligible for suspension of deportation or special rule cancellation of removal under this subpart, but does not admit deportability or inadmissibility; or

(4) The applicant failed to appear for a scheduled interview with an asylum officer or failed to comply with fingerprinting processing requirements and such failure was not excused by the Service, unless the application is dismissed.

(e) *Dismissal of the application.* An asylum officer shall dismiss without prejudice an application for suspension of deportation or special rule cancellation of removal submitted by an applicant who has been granted asylum, or who is in lawful immigrant or non-immigrant status. An asylum officer may also dismiss an application for failure to appear, pursuant to § 240.68. The asylum officer will provide the applicant written notice of the statutory or regulatory basis for the dismissal.

(f) *Special provisions for certain ABC class members whose proceedings before EOIR were administratively closed or continued.* The following provisions shall apply with respect to an *ABC* class member who was in proceedings before the Immigration Court or the Board, and those proceedings were closed or continued pursuant to the *ABC* settlement agreement:

(1) *Suspension of deportation or asylum granted.* If an asylum officer grants asylum or suspension of deportation, the previous proceedings before the Immigration Court or Board shall be terminated as a matter of law on the date relief is granted.

(2) *Asylum denied and application for suspension of deportation not approved.* If an asylum officer denies asylum and does not grant the applicant suspension of deportation, the Service shall move to recalendar proceedings before the Immigration Court or resume proceedings before the Board, whichever is appropriate. The Service shall refer to the Immigration Court or the Board the application for suspension of deportation. In the case where jurisdiction rests with the Board, an

application for suspension of deportation that is referred to the Board will be remanded to the Immigration Court for adjudication.

(g) *Special provisions for dependents whose proceedings before EOIR were administratively closed or continued.* If an asylum officer grants suspension of deportation or special rule cancellation of removal to an applicant described in § 240.61(a)(4) or (a)(5), whose proceedings before EOIR were administratively closed or continued, those proceedings shall terminate as of the date the relief is granted. If suspension of deportation or special rule cancellation of removal is not granted, the Service shall move to recalendar proceedings before the Immigration Court or resume proceedings before the Board, whichever is appropriate. The Service shall refer to the Immigration Court or the Board the application for suspension of deportation or special rule cancellation of removal. In the case where jurisdiction rests with the Board, an application for suspension of deportation or special rule cancellation of removal that is referred to the Board will be remanded to the Immigration Court for adjudication.

(h) *Special provisions for applicants who depart the United States and return under a grant of advance parole while in deportation proceedings.* Notwithstanding paragraphs (f) and (g) of this section, for purposes of adjudicating an application for suspension of deportation or special rule cancellation of removal under this subpart, if an applicant departs and returns to the United States pursuant to a grant of advance parole while in deportation proceedings, including deportation proceedings administratively closed or continued pursuant to the *ABC* settlement agreement, the deportation proceedings will be considered terminated as of the date of applicant's departure from the United States. A decision on the NACARA application shall be issued in accordance with paragraph (a), and paragraphs (c) through (e) of this section.

PART 246—RESCISSION OF ADJUSTMENT OF STATUS

10. The authority citation for part 246 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1255, 1256, 1259; 8 CFR part 2.

11. Section 246.1 is amended by revising the first sentence to read as follows:

§ 246.1 Notice.

If it appears to a district director that a person residing in his or her district was not in fact eligible for the adjustment of status made in his or her case, or it appears to an asylum office director that a person granted adjustment of status by an asylum officer pursuant to 8 CFR 240.70 was not in fact eligible for adjustment of status, a proceeding shall be commenced by the personal service upon such person of a notice of intent to rescind, which shall inform him or her of the allegations upon which it is intended to rescind the adjustment of his or her status. * * *

§ 246.2 [Amended]

12. Section 246.2 is amended by adding the phrase ''or asylum office director'' immediately after the phrase ''district director.''

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

13. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

14. Section 274a.12 is amended by revising the first sentence in paragraph (c)(10), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(10) An alien who has filed an application for suspension of deportation under section 244 of the Act (as it existed prior to April 1, 1997), cancellation of removal pursuant to section 240A of the Act, or special rule cancellation of removal under section 309(f)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Pub. L. 104–208 (110 Stat. 3009–625) (as amended by the Nicaraguan Adjustment and Central American Relief Act (NACARA)), title II of Pub. L. 105–100 (111 Stat. 2160, 2193) and whose properly filed application has been accepted by the Service or EOIR. * * *

* * * * *

PART 299—IMMIGRATION FORMS

15. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

16. Section 299.1 is amended in the table by adding the entry for Form ''I–881'' in proper numerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	* * * * * *
I–881	5–01–99	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Pub. L. 105–100 (NACARA))
*	*	* * * * * *

17. Section 299.5 is amended in the table by adding the entry for Form ''I–881'' in proper numerical sequence, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
*	* * * * * *	*
I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Pub. L. 105–100 (NACARA)).	1115—0227

INS form No.	INS form title	Currently assigned OMB control No.
* * * * * * *		

Dated: May 14, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–12643 Filed 5–20–99; 8:45 am]

BILLING CODE 4410–10–P

Federal Register

Friday
May 21, 1999

Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program for Fiscal Year 2000; Request for Proposals; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program for Fiscal Year 2000; Request for Proposals

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of Availability of Program Solicitation and Request for Proposals for Fiscal Year 2000 Small Business Innovation Research Grants Program and Request for Input.

SUMMARY: Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law Number 99–591, 100 Stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through phase I of its Small Business Innovation Research (SBIR) Grants Program.

By this notice, the Cooperative State Research, Education, and Extension Service (CSREES) additionally solicits stakeholder input from any interested party regarding the Fiscal Year 2000 SBIR Grants Program, Request for Proposals, for use in the development of the next request for proposals for this program.

DATES: All phase I proposals must be received at USDA on or by September 2, 1999. Proposals not received on or by this date will not be considered for funding, with the following exceptions. Proposals received after September 2, 1999, will be accepted provided they are postmarked before or on (1) September 1, 1999, if sent by overnight courier; (2) August 30, 1999, if sent by priority mail; or (3) August 26, 1999, if sent by regular first class mail.

User comments are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

ADDRESSES: All proposals must be submitted to the following address: Small Business Innovation Research Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245.

Note: The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Small Business Innovation Research Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW; Washington, DC 20024. Telephone: (202) 401–5048.

Written user input comments should be submitted by first-class mail to: Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA–CSREES; Stop 2299; 1400 Independence Avenue, SW; Washington, DC 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year of the request for proposals to which you are responding.

FOR FURTHER INFORMATION CONTACT: Dr. Charles F. Cleland; Director, SBIR Program; Cooperative State Research, Education, and Extension Service; STOP 2243; 1400 Independence Avenue, SW.; Washington, DC 20250–2243. Telephone: (202) 401–4002. Facsimile: (202) 401–6070.

SUPPLEMENTARY INFORMATION: This program will be administered by the Cooperative State Research, Education, and Extension Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging participation of women-owned and socially and economically disadvantaged small business concerns in technological innovation.

The total amount expected to be available for phase I of the SBIR Program in fiscal year (FY) 2000 is approximately $5,000,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of September 2, 1999. The research to be supported is in the following topic areas:

1. Forests and Related Resources
2. Plant Production and Protection
3. Animal Production and Protection
4. Air, Water and Soils
5. Food Science and Nutrition
6. Rural and Community Development
7. Aquaculture
8. Industrial Applications
9. Marketing and Trade

The award of any grants under the provisions of this program is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR part 3403. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations (7 CFR part 3015, as amended), Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) (7 CFR part 3017), Restrictions on Lobbying (7 CFR part 3018), and Managing Federal Credit Programs (7 CFR part 3) apply to this program. Copies of 7 CFR parts 3403, 3015, 3017, 3018, and 3 may be obtained by writing or calling the office indicated below.

The program solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the following office: Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW.; Washington, DC 20250–2245. Telephone: (202) 401–5048. Application materials also may be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov which states that you wish to receive a copy of the application materials for the FY 2000 Small Business Innovation Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible. Please note that applicants who submitted SBIR proposals for FY 1999 or who have recently requested placement on the list for FY 2000 will automatically receive a copy of the FY 2000 program solicitation.

Stakeholder Input

CSREES is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C.

7613(c)(2). This section requires the Secretary to solicit and consider input on a current request for proposals from persons who conduct or use agricultural research, education, or extension for use in formulating the next request for proposals for an agricultural research program funded on a competitive basis.

Written user input comments should be submitted by first-class mail to: Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA–CSREES; Stop 2299; 1400 Independence Avenue, SW; Washington, DC 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year request for proposals to which you are responding. Comments are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

Done at Washington, DC., this 17 day of May, 1999.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 99–12883 Filed 5–20–99; 8:45 am]

BILLING CODE 3410–22–P

Friday
May 21, 1999

Part IV

Securities and Exchange Commission

17 CFR Part 230 et al.

Rulemaking for EDGAR System; Adoption of Updated EDGAR Filer Manual; Final Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240, 270, and 274

[Release Nos. 33–7684; 34–41410; IC–23843 File No. S7–9–99]

RIN 3235–AH70

Rulemaking for EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is modernizing the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. Beginning June 28, 1999, we will be able to accept filings submitted to EDGAR in HyperText Markup Language (HTML) in addition to documents submitted in the current American Standard Code for Information Interchange (ASCII) format; filers also will have the option of accompanying their required filings with unofficial copies in Portable Document Format (PDF). Beginning May 24, 1999, and continuing through June 25, 1999 (the test period), filers may submit test filings that include documents in HTML and PDF format; filers electing to submit test HTML and/or PDF documents during the test period must do so in accordance with the new rule provisions. In this release, we are adopting rule amendments reflecting initial changes to filing requirements resulting from EDGAR modernization, as well as other changes clarifying or updating our rules.

EFFECTIVE DATE: These rules are effective on June 28, 1999 and apply to filings submitted on or after that date.

FOR FURTHER INFORMATION CONTACT: If you have questions about the rules we are adopting, please contact one of the following members of our staff: in the Division of Investment Management, Ruth Armfield Sanders, Senior Counsel, (202) 942–0633; and in the Division of Corporation Finance, Margaret R. Black, EDGAR Specialist, (202) 942–2940. If you have questions about the development of the modernized EDGAR system, please contact Richard D. Heroux, EDGAR Program Manager, (202) 942–8885, in the Office of Information Technology.

SUPPLEMENTARY INFORMATION: Today we are adopting amendments to the following rules relating to electronic filing on the EDGAR system: Rules 485, 486, 487, 495, and 497,[1] and Form S–6,[2] under the Securities Act of 1933 (Securities Act);[3] Rules 10, 11, 101, 102, 302, 303, 304, 305, 306, 307, and 310 of Regulation S–T;[4] Schedule 14A[5] under the Securities Exchange Act of 1934 (Exchange Act);[6] Rules 8b–23 and 8b–32,[7] and Form N–SAR,[8] under the Investment Company Act of 1940 (Investment Company Act);[9] and Forms N–1, N–1A, N–2, N–3, N–4, and N–5[10] under the Securities Act and the Investment Company Act. We also are adding the following new rules to Regulation S–T: Rules 104, 105, and 106.

I. Modernization of EDGAR

A. Background

In 1984, we initiated the EDGAR system to automate the receipt, processing, and dissemination of documents required to be filed with us under the Securities Act, the Exchange Act, the Public Utility Holding Company Act of 1935 (Public Utility Act),[11] the Trust Indenture Act of 1939,[12] and the Investment Company Act. Since 1996, we have required all domestic public companies to file with us electronically through the EDGAR system, absent an exemption. EDGAR filings are disseminated electronically and displayed on our web site at http://www.sec.gov, in the form in which we receive them. The EDGAR system's broad and rapid dissemination benefits the public by allowing investors and others to obtain information rapidly in electronic format. Electronic format is easily searchable and lends itself to ready financial analysis, using spreadsheets and other methods.

Recent technological advances, most notably the rapidly expanding use of the Internet, have led to unprecedented changes in the means available to corporations, government agencies, and the investing public to obtain and disseminate information. Today many companies, regardless of size, make information available to the public through Internet web sites. On those sites and through links from one web site to others, individuals may obtain a vast amount of information in a matter of seconds. Advanced data presentation methods using audio, video, and graphic and image material are now available through even the most inexpensive personal computers or laptops.

As discussed below, we are modernizing the EDGAR system to accommodate some of the changes in technology that have occurred since the system was developed. On March 10, 1999, we issued a release proposing amendments to our rules to reflect initial changes to filing requirements resulting from EDGAR modernization, as well as certain other changes to clarify or update the rules.[13] In that release, we proposed to accept filings submitted to EDGAR in HTML format as well as documents submitted in ASCII format and to allow filers to accompany their required filings with unofficial copies in PDF format.[14] Today we are adopting these amendments as proposed.

We received a number of comment letters with suggestions concerning the evolving EDGAR system. Many of these comments addressed divergent concerns of filers, filing agents, disseminators, and public users of the EDGAR database. We appreciate the need to balance the competing interests of these parties in order to have a system that adequately addresses the fundamental needs of each. We have considered and will continue to consider these comments in connection with future planning for the system and future rulemaking related to the next stage of EDGAR modernization following the HTML implementation period.[15]

Some disseminators and information providers commented that they would not have enough time to make the required modifications to their systems to begin accepting HTML and PDF documents on May 24, 1999. We have decided not to make the rules effective on May 24 as planned. Instead, during the test period from May 24 through June 25, 1999, filers may submit test filings that include documents in HTML and PDF format. Live filings, however,

[1] 17 CFR 230.485, 230.486, 230.487, 230.495, and 230.497.

[2] 17 CFR 239.16.

[3] 15 U.S.C. 77a, *et seq.*

[4] 17 CFR 232.10, 232.11, 232.101, 232.102, 232.302, 232.303, 232.304, 232.305, 232.306, 232.307, and 232.310.

[5] 17 CFR 240.101.

[6] 15 U.S.C. 78a, *et seq.*

[7] 17 CFR 270.8b–23 and 8b–32.

[8] 17 CFR 274.101.

[9] 15 U.S.C. 80a–1, *et seq.*

[10] 17 CFR 239.15 and 274.11, 17 CFR 239.15A and 274.11A, 17 CFR 239.14 and 274.11a–1, 17 CFR 239.17a and 274.11b, 17 CFR 239.17b and 274.11c, 17 CFR 239.24 and 274.5.

[11] 15 U.S.C. 79a, *et seq.*

[12] 15 U.S.C. 77sss, *et seq.*

[13] Rulemaking for EDGAR System, Release Nos. 33–7653; 34–41150; IC–23735 (Mar. 10, 1999) [64 FR 12908] (the proposing release).

[14] In the proposing release, we also described further changes to the system that we plan to make after the HTML implementation period. We will propose corresponding rule changes closer to that time.

[15] You may read and copy comment letters in our Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549 in File No. S–7–9–99. You also may read the comment letters that were submitted electronically on our web site (http://www.sec.gov).

must continue to be in ASCII format. The test period should provide disseminators with sufficient time to assure completion of system changes and will provide filers the opportunity to test the EDGAR system's new features. Beginning June 28, filers may make live filings including documents in HTML and PDF format.

B. Implementation of HTML/PDF Environment

With EDGAR modernization, we hope to make the system easier for filers to use and the documents more attractive and readable for the users of public information. Currently, filers must submit electronic filings to the EDGAR system in a text-based ASCII format. In the modernized system, for most filings, filers may choose to submit documents to us in either HTML or in ASCII. We expect that HTML will eventually replace ASCII for most filings. Filers also may submit unofficial PDF copies of filings. Unlike ASCII documents, HTML and PDF documents can include graphics, varied fonts, and other visual displays that filers use when they create Internet presentations or material for distribution to shareholders and other investors. In this release, we refer to the required filings that filers must submit only in either ASCII or HTML formats as official filings. We refer to the PDF documents as unofficial PDF copies because filers may not use them instead of HTML or ASCII documents to meet filing requirements.

Beginning on June 28, 1999 (and on May 24, 1999 on a test basis) and extending until early 2000 (the HTML implementation period), we are imposing certain limitations on HTML documents. These limitations are necessary due to technical issues that we must resolve before full implementation of the new HTML component of the EDGAR system.[16] We will provide limited support for HTML by allowing only certain tags (commands and identifying information) to be accepted by the EDGAR system. Later, we plan to further modernize the EDGAR system so that it will be able to accept and display HTML documents that use graphic and other visual presentations. In this release, we describe how the EDGAR system is changing for the initial HTML implementation period, and we adopt rule changes to govern EDGAR filing during this period.[17]

C. Use of HTML

Although the EDGAR system will be able to accept HTML documents beginning on June 28, 1999 (and on May 24, 1999 on a test basis), we are not now requiring the use of HTML. However, we expect to require HTML for most filings in the future, so we encourage filers to use it and gain experience with this format if they do not have it already.[18] We are providing technical support for filers to assist them in submitting and correcting HTML documents through our filer technical support function.

As proposed, during the HTML implementation period, if HTML is used, each EDGAR document may consist of no more than one HTML file. Filers may not submit EDGAR documents composed of multiple linked HTML files. The EDGAR system will suspend any submission containing any HTML document composed of more than one file.

D. Use of PDF

In addition to permitting the use of HTML in filings, we are permitting filers to submit a single unofficial PDF copy of each electronic document.[19] These copies will be disseminated publicly. We believe that filers may want to submit these copies because PDF documents retain all the fonts, formatting, colors, images, and graphics contained in an original document. The unofficial PDF copy will be optional, but if a filer submits an unofficial PDF copy of a document, that PDF document must be substantively equivalent[20] to the official HTML or ASCII document of which it is a copy. Further, filers may not make a submission consisting solely of PDF documents; filers must include unofficial PDF copies only in submissions containing official documents in HTML or ASCII format.

E. Graphic and Image Material

During the HTML implementation period, we will not accept graphic or image material in HTML documents.[21] The EDGAR system will suspend submissions made during the HTML implementation period if they contain tags for graphic or image files. However, the optional, unofficial PDF copy of an EDGAR document may contain static graphic and/or image material. After the HTML implementation period, we intend to propose that filers may include graphic and image material in HTML documents.

We also will prohibit any EDGAR submission containing animated graphics (*e.g.*, files with moving corporate logos or other animation), either in any official document or any unofficial PDF copy. We are imposing this requirement due to the issues concerning how to capture and represent the animated graphics, which we cannot print or search, in defining the official filing.

F. Limitation on Hypertext Links

During the HTML implementation period, we are prohibiting hypertext links from HTML documents to external web sites. Similarly, we are prohibiting hypertext links from HTML documents to external documents (including exhibits), whether or not the document is part of the same filing. However, electronic filers may include hypertext links to different sections within a single HTML document.[22] A document may include an inactive textual reference to external sites or documents for informational purposes,[23] but it may not include a link to the external site or

[16] As we stated in the proposing release, the modernized EDGAR system is designed to be Year 2000 compliant. During the summer of 1999, we will turn the dates forward on the EDGAR system at specified times to give filers an opportunity to submit test filings so they can assure themselves that the Commission-owned and -operated EDGAR components will operate after January 1, 2000. We will issue an announcement with the details shortly. The announcement will be posted on our web site. We advise filers to have their own operating environments certified to be Year 2000 compliant.

[17] We also have revised the EDGAR Filer Manual. *See* Release No. 33–7685 (May 17, 1999). The EDGAR Filer Manual sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the EDGAR system. Filers must comply with the provisions of the Filer Manual to assure timely acceptance and processing of electronic filings. *See* Rule 301 of Regulation S–T [17 CFR 232.301].

[18] *See* footnote 35 and accompanying text for submissions that we will keep in ASCII format.

[19] For example, if a filing consists of a registration statement plus five exhibits, there are six electronic documents for EDGAR purposes. Generally, the filer can submit all of these as HTML documents, all as ASCII documents, or some as HTML and some as ASCII documents. The filer also has the option to accompany any or all of the six documents with an unofficial PDF copy. But the rules do not permit a filer to submit a single unofficial PDF copy including the registration statement and exhibits; each PDF document should reflect only one ASCII or HTML document. The rules prohibit filers from including more PDF documents than the total number of HTML and ASCII documents combined.

[20] Substantively equivalent documents are the same in all respects except for the formatting and inclusion of graphics (instead of the narrative and/or tabular description of the graphics). For documents to be substantively equivalent, the text of the two documents must be identical.

[21] Filers should continue to provide a fair and accurate description of the differences between a version including graphic or image material and the filed version, as required by Rule 304 of Regulations S–T [17 CFR 232.304].

[22] For example, companies might wish to include a prospectus table of contents containing links to the various sections of the prospectus.

[23] It is the staff's position that such an inactive textual reference will not be deemed to incorporate the material by reference into the filing. *See* ITT Corp. (Dec. 6, 1996) and Baltimore Gas & Electric Co. (Jan. 6, 1997).

document. We will consider expanding the use of hypertext links after the HTML implementation period.

G. HTML Standard; Permissible Tag Set

We are adopting a specific HTML standard for HTML documents submitted on the EDGAR system during the HTML implementation period. Because different Internet browsers used by filers or the public may display the information presented in an HTML document in a different fashion, a document viewed through one browser may have a different appearance and layout from the same filing viewed through a different browser. This would be especially evident when a filing printed in hard copy from one browser appears significantly different from the same filing printed out from another browser. Initially, we are maximizing the likelihood of consistent document appearance across different browsers by specifying HTML 3.2 as the required standard for HTML documents.

Some commenters expressed the view that the selection of HTML 3.2 as the standard imposes a burden on systems that are not browser-based. Other commenters, however, expressed the view that HTML 3.2 was necessary for standardization and consistency. Still other commenters urged us to adopt a higher standard such as HTML 4.0. We believe HTML 3.2 represents the best approach at this time. We will consider the evolution of this standard when appropriate.

We also are adopting a set of permissible HTML 3.2 tags for use in HTML documents during the HTML implementation period. These permissible tags allow for most HTML 3.2 formatting capability while eliminating active content and certain classes of hypertext links.[24] We have included the tag list in the EDGAR Filer Manual. In general, the EDGAR system will suspend submissions which contain tags that are not permitted. We anticipate that the permitted tag set will evolve over time to accommodate the industry standard and needs of filers.

As proposed, we are not at this time allowing EDGAR submissions to include tables within tables (nested tables). This is because users of EDGAR information may find it difficult to locate and use information in documents with nested tables. In addition, as proposed, EDGAR submissions may not contain tags used to include executable code, either in any official submission or any unofficial PDF copy, at any time, either during the HTML implementation period or subsequently.[25] The EDGAR system will suspend any submission containing executable code.

II. Rule Amendments To Accommodate EDGAR Modernization

We are adopting the following amendments to our rules and regulations to accommodate the initial modernization of EDGAR. We are amending all of the rules as proposed.

A. Amendments to Regulation S–T.

We are amending several provisions of Regulation S–T, which governs the preparation and submission of electronic filings to us, in connection with the addition of HTML documents and unofficial PDF copies to the EDGAR environment.

Rule 11—*Definition of Terms used in Part 232.* Rule 11[26] contains definitions used in Regulation S–T. We are adding to the definition section of Regulation S–T the following new terms: animated graphics; ASCII document; disruptive code; electronic document; executable code; HTML document; hypertext links or hyperlinks; and unofficial PDF copy. We also are revising the definition of electronic filing to make it clear that an electronic filing may include more than one document.

New Rule 104—*Unofficial PDF Copies Included in an Electronic Submission.* Rule 104 provides that an electronic submission may include one unofficial PDF copy of each electronic document contained within an electronic submission.[27] Each unofficial PDF copy must be substantively equivalent to its associated ASCII or HTML document contained in the submission.[28] Filers wanting to submit an unofficial PDF copy to replace one with errors, or to include an omitted one, must submit the unofficial PDF copy as part of another electronic submission containing an amendment to the original submission. The amendment must include an explanatory note that the purpose of the amendment was to add or replace an unofficial PDF copy.[29] If the amendment was being filed to add or resubmit an unofficial PDF copy of one or more exhibits, the submission must include an exhibit document for each exhibit for which an unofficial PDF copy was being submitted.[30]

Rule 104 provides that unofficial PDF copies are not official filings.[31] The rule makes it clear that unofficial PDF copies that are prospectuses retain prospectus liability under Section 12 of the Securities Act.[32] The rule also makes it clear that an unofficial PDF copy may contain graphic and image material even though its ASCII (and, during the implementation period, HTML) counterpart does not contain such material.[33]

We will accept electronic submissions even if an unofficial PDF copy is flawed and not accepted. In such a case, we will accept the submission but not the PDF document.[34] Otherwise, filers would risk having a late time-sensitive filing because of a problem with the unofficial PDF copy.

New Rule 105—*Limitation on Use of HTML Documents and Unofficial PDF Copies; Use of Hypertext Links.* Filers may not submit Form N–SAR, Form 13F, or Financial Data Schedules as HTML documents.[35] These documents have standard formats and tagging designed for presentation in ASCII, and their current format facilitates their downloading and use in other computer applications.

Rule 105 prohibits electronic filers from including in HTML documents hypertext links to sites or documents outside the HTML document that is filed with us.[36] However, the rule allows electronic filers to include hypertext links to different sections within a single HTML document. Rule 105 provides that, if an accepted filing includes external links in contravention of this rule, we will not consider information contained in the linked material to be part of the official filing for determining compliance with reporting obligations. Such information will, however, continue to be subject to

[24] The permissible tag set does not include proprietary extensions that are not supported by all browsers.

[25] *See* note 40 and accompanying text.

[26] 17 CFR 232.11.

[27] Rule 104(a) [17 CFR 232.104(a)]. We also are permitting the filer to submit an unofficial PDF copy of correspondence or a cover letter document.

[28] *See* note 20 and accompanying text.

[29] The amendment may consist solely of the cover page (or the first page of the document), the explanatory note, and the signature page and exhibit index (where appropriate), and the corresponding unofficial PDF copy may include the complete text of the official filing for which the amendment was being submitted.

[30] The amendment may consist of the cover page (or first page of the document), the explanatory note, the signature page (where appropriate), the exhibit index, a separate electronic document for each exhibit for which an unofficial PDF copy is being submitted, and the corresponding unofficial PDF copy of each exhibit document. However, the text of the official exhibit document(s) could contain only the following legend: RESUBMITTED TO ADD/REPLACE UNOFFICIAL PDF COPY OF EXHIBIT.

[31] Rule 104(d) [17 CFR 232.104(d)].

[32] Rule 104(e) [17 CFR 232.104(e)].

[33] Rule 104(b) [17 CFR 232.104(b)].

[34] *See* the discussion of Rule 106 [17 CFR 232.106] below.

[35] Rule 105(a) [17 CFR 232.105(a)]. We are allowing filers the option of submitting all exhibits to Form N–SAR except Financial Data Schedules as HTML documents.

[36] Rule 105(b) [17 CFR 232.105(b)].

the civil liability and anti-fraud provisions of the federal securities laws.[37]

Some commenters expressed concerns that this rule would represent our general position on liability for linked material, including information that companies and broker-dealers put on their own web sites. This rule, however, applies only to EDGAR filings and is narrowly drawn to address the initial stages of EDGAR modernization. We will further consider the status of links in EDGAR filings if we propose to expand filers' ability to use links to other documents or external sites after the HTML implementation period.[38]

New Rule 106—*Prohibition Against Electronic Submissions Containing Executable Code.* The modernized EDGAR system is designed to minimize security risks. Accordingly, Rule 106[39] prohibits any EDGAR submission containing executable code, either in any official submission or any unofficial PDF copy, at any time, either during the HTML implementation period or subsequently.[40] Executable code includes, but is not limited to, disruptive code.[41] This requirement is necessary to protect the integrity of the EDGAR system and database, by reducing the possibility of unauthorized access to sensitive information, and to reduce the possibility of introducing viruses or other destructive applications into the EDGAR system (and to any disseminator receiving data from the EDGAR system).

We will, in general, suspend any attempted submission that our staff determines contains executable code.[42] The EDGAR system is programmed to detect and prohibit acceptance of such code during acceptance processing. If a submission is accepted, and our staff later determines that the accepted submission contains executable code, our staff may delete any document contained in the electronic submission from the EDGAR system and direct the electronic filer to resubmit electronically replacement documents for all or selected documents deleted from the submission. We are aware that suspending acceptance of a filing, or deleting it from the EDGAR database, could have significant consequences to the filer, such as causing a filing to miss its due date or preventing a time-sensitive filing from moving forward. Nevertheless, we need to take whatever steps are necessary to address potential security problems, and our staff will work with filers to minimize any adverse consequences.

Rule 302—*Signatures.* Rule 302[43] currently provides that signatures to or within electronic documents must be in typed form. We are amending this rule to make it clear that this provision relates only to *required* signatures to or within electronic submissions.[44] We anticipate allowing signatures that are not required to appear as script in HTML documents once we permit graphic and image material.

Rule 304—*Graphic, Image, Audio and Video Material.* Rule 304[45] currently prohibits the inclusion of graphic, image, or audio material in an EDGAR document. We are adding the word ''video'' to the rule to make it clear that that information also is prohibited.[46] Rule 304 applies only to official filings, not to unofficial PDF copies, which may contain graphic and image material (but not animated graphics, audio or video material).[47]

Rule 305—*Number of Characters per Line; Tabular and Columnar Information.* Currently, Rule 305[48] limits the number of characters per line. We are adding paragraph (b) to the rule to provide that the limitations of paragraph (a)[49] do not apply to HTML documents.[50]

Rule 306—*Foreign Language Documents and Symbols.* Rule 306[51] provides that foreign currency denominations be expressed in words or letters in the English language rather than representative symbols. We are amending Rule 306 to allow HTML documents to include the representative foreign currency symbols specified in the EDGAR Filer Manual and to provide that the limitations would not apply to documents which are unofficial PDF copies.

Rule 307—*Bold-Face Type.* Rule 307 provides that filers should present required bold-face type as capital letters in ASCII documents. We are amending Rule 307 to make it clear that the provision does not apply to HTML documents because filers are able to include bold-face type in HTML documents.

Rule 310—*Marking Changed Material.* Rule 310[52] provides that the requirement for marking changed materials is satisfied by inserting the tag <R> before and the tag </R> following a paragraph containing changed material. We are retaining this redlining convention and extending it to HTML documents.[53] Further, we are allowing filers to mark changed material in HTML documents within paragraphs, as well.[54]

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[37] The rule provides that information contained in the linked material is not part of the official filing for reporting purposes in order to prevent a filing from being considered complete when the entire content of the filing is not available without reference to another document. This provision should not, however, be viewed as a statement that linked material is not considered to be part of the filed document for other purposes.

[38] We are considering giving more general public guidance on a variety of issues arising from the use of electronic media in contexts other than EDGAR, which could include link liability issues. *See* note 327 in ''The Regulation of Securities Offerings,'' Securities Act Release No. 7606A (Nov. 13, 1998)[63 FR 67174].

[39] 17 CFR 232.106.

[40] Executable code is defined as instructions to a computer to carry out operations that use features beyond the ability of the viewer, reader, or Internet browser to interpret and display HTML, PDF, and static graphic files. Such code may be in binary (machine language) or in script form. *See* the definition of executable code in Rule 11 of Regulation S–T [17 CFR 232.11]. Thus, scripting languages, such as JavaScript and similar scripting languages, fall into this class of executable code, as does Java, ActiveX, Postscript, and any other programming language.

[41] The term disruptive code means any active content or other executable code, or any program or set of electronic computer instructions inserted into a computer, operating system, or program that replicates itself or that actually or potentially modifies or in any way alters, damages, destroys or disrupts the file content or the operation of any computer, computer file, computer database, computer system, computer network or software, or as otherwise set forth in the EDGAR Filer Manual. A violation of Rule 106 or the relevant provision of the EDGAR Filer Manual also may be a violation of the Computer Fraud and Abuse Act of 1986, as amended, and other statutes and laws.

[42] If the executable code is contained only in one or more PDF documents, we will accept the submission but not the PDF document(s).

[43] 17 CFR 232.302.

[44] We are keeping the rule that required signatures be typed to ensure legibility of these signatures. We are not requiring signatures in unofficial PDF copies.

[45] 17 CFR 232.304.

[46] As part of a later rulemaking proposal, we anticipate proposing to lift the prohibition on graphic and image material (but not on audio or video material) after the HTML implementation period.

[47] *See* Rule 104 [17 CFR 232.104].

[48] 17 CFR 232.305.

[49] *I.e.*, the narrative portion of an electronic document may not exceed certain character limitations per line and other formatting restrictions.

[50] Rule 305(b) [17 CFR 232.305(b)].

[51] 17 CFR 232.306.

[52] 17 CFR 232.310.

[53] Filers should not redline PDF documents. While the EDGAR system will remove the redlining tags from HTML documents before they are publicly disseminated (just as is currently the case with ASCII documents), the EDGAR system will not remove the redlining tags from PDF documents. Therefore, if a filer includes redlining tags in a PDF document, the disseminated PDF document will contain redlining tags.

[54] We caution filers that, while evidence of redlining tags in HTML documents will not be viewable in the browser, it may be viewable in the HTML source code.

B. Other Rule Amendment in Connection With EDGAR Modernization

Paragraph (k)(2)(ii) of Rule 497[55] requires investment company filers to submit additional copies of certain forms of profiles in the primary form intended for distribution to investors (*e.g.*, paper or electronic media) or, if the profile is distributed primarily on the Internet, to provide the electronic address (URL) of the profile page(s) in an exhibit to the electronic filing. We are amending paragraph (k)(2)(ii) of Rule 497 to allow a filer to submit with its electronically filed definitive form of profile an unofficial PDF copy of the profile instead.

C. Miscellaneous Amendments

We also are adopting several electronic filing rule amendments that are not directly associated with EDGAR modernization.

1. Amendments to Regulation S–T

Rule 10—*Form ID.* Rule 10[56] provides that filers must file Form ID, the uniform application for access codes to file on the EDGAR system, before they begin electronic filing. We are amending Rule 10 to make it clear that filers must submit Form ID in paper format.

Rule 101(a)—*Mandated Electronic Submissions and Exceptions.* The note to paragraph (a)(1)(iii) of Rule 101 instructs filers filing Schedules 13D and 13G with respect to foreign private issuers to file in paper because one of the required data elements—the IRS tax identification number—is not available for foreign issuers. However, a paper filing is no longer necessary. The staff advises these filers to include in the EDGAR submission header all zeroes (*i.e.*, 00–0000000) for the IRS tax identification number, so that they may file electronically. We are amending the note to this rule to formalize the existing practice and permit electronic filing.

Rules 101(b), 102(e), and 303—*Permitted Electronic Submissions; Exhibits; and Incorporation by Reference.*

Currently, electronic filers may submit exhibits to Forms N–SAR, other than the Financial Data Schedule, either electronically or in paper.[57] We have allowed filers to submit these exhibits in paper because, during phase-in to electronic filing, registrants could file their Forms N–SAR electronically on a voluntary basis in advance of their phase-in date, at a time when they were not able to make any other electronic filings. With the completion of phase-in, we are now requiring that filers submit all Form N–SAR exhibits electronically.[58]

Because phase-in has been completed, we also are removing the references to phase-in for registered investment companies and business development companies.

2. Other Rule Amendments

Item 22(a)(4) of Schedule 14A and Forms N–1, N–1A, N–2, N–3, N–4, N–5, and S–6—*Financial Data Schedules.* We are revising provisions concerning Financial Data Schedules (Schedules) submitted by registered investment companies and business development companies. We believe that electronic filers that are registered investment companies will provide us with sufficient financial information in Schedule form by filing their Schedules with their Forms N–SAR.[59] Therefore, we are removing the requirement for registered investment companies to submit Schedules with other forms and filings.[60] Business development companies will continue to submit Schedules with their Form 10–K filings; face amount certificate companies and other investment companies filing on forms not unique to investment companies will continue to submit Schedules with the relevant forms.[61]

Investment Company Act Rules 8b–23 and 8b–32—*Incorporation by Reference; Incorporation of Exhibits by Reference.* We are making minor revisions to Rules 8b–23 and 8b–32[62] to remove the reference to Regulation S–T Rule 102. This reference is no longer relevant following completion of phase-in by investment company registrants.

III. Cost-Benefit Analysis

Our determination in 1984 to disseminate our EDGAR database to the public marked a milestone in public access to timely information relating to the nation's securities markets. Since that time, technology has evolved rapidly. The rules we adopt today reflect this reality. They represent the first stage of our modernization program, which will more closely align our technology to industry standards and maintain the effectiveness of this important resource.

EDGAR modernization will ultimately result in significant benefits to the securities markets, investors, and other members of the public, by increasing the accessibility of the information that is filed and made available through the EDGAR system. Investors will benefit from EDGAR modernization because they will receive documents that communicate more effectively. For example, the on-line presentation of documents formatted in HTML (unlike in ASCII) better accommodates the sort of indentation, spacing, bullet points, and highlighting that we encourage in our plain English guidance. Acceptance of unofficial documents in PDF format should allow even greater preservation of the original presentation of the document. We are aware that the process of converting a document to an ASCII format can result in a document that is difficult to read. Allowing the voluntary filing of HTML documents is an important first step in the transition to a broader use of HTML in filings.

Companies that make public filings will benefit from having the option to file HTML documents and to submit unofficial PDF copies because their HTML and PDF documents will communicate more effectively with shareholders and be more attractive for marketing and other purposes. As investors find that they can more effectively obtain the information they seek from the EDGAR system, filers should get fewer requests for paper copies of filings. Some filers that prepare documents in HTML for purposes of offerings or of company web site postings may find it less burdensome to convert documents into the version of HTML provided for in the rules than to convert them into ASCII.

At the same time, we recognize that the full transition to HTML formatting will impose some hardware, software, and staffing costs associated with the modernization of computer systems to industry standards. At this stage, issuers need not incur any immediate costs because filing in HTML is voluntary. Some issuers may use filing agents, such

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[55] 17 CFR 230.497(k)(2)(ii).

[56] 17 CFR 232.10.

[57] *See* the former provisions of Rules 101(b)(7), 102(e)(2), and 303(a)(3)(ii) [17 CFR 101(b)(8), 102(e)(2), and 202(a)(3)(ii)].

[58] We are removing the last sentence of Instruction F(2) of Form N–SAR [17 CFR 274.101], which allowed filers to submit exhibits to the form in paper, and removing the exemption for small business investment companies, which are now phased-in to electronic filing. Finally, we are revising Instruction F(1) to correctly reference Sub-Item 77Q1 (Exhibits).

[59] Unit investment trusts are not required to submit the Schedule with their N–SARs.

[60] *See* revisions to Item 22(a)(4) of Schedule 14A [17 CFR 240.101]; and Forms N–1 [§§ 239.15 and 274.11], N–1A [§§ 239.15A and 274.11A], N–2 [§§ 239.14 and 274.11a–1], N–3 [§§ 239.17a and 274.11b], N–4 [§§ 239.17b and 274.11c], N–5 [§§ 239.24 and 274.5], and S–6 [§ 239.16]. We also are revising Rules 485, 486, 487, and 495 [17 CFR 230.485, 486, 487, and 495], which refer to Financial Data Schedule requirements within registration statement forms.

The staff of the Division of Investment Management will not object if investment companies do not include Financial Data Schedules in filings under the above rule and forms submitted before the effective date of the amendments.

[61] *See* Rule 483(e)(2)(ii) [17 CFR 483(e)(2)(ii)].

[62] 17 CFR 270.8b–23 and 270.8b–32.

as financial printers, if they wish to submit HTML documents without incurring the system costs themselves. Filing agents that are not HTML-ready may incur some immediate additional costs to meet any customer demand for this service. Disseminators of EDGAR information will face some transitional costs as they revise their software and expand their storage capacity to accommodate HTML and PDF documents.[63] The volume of HTML and PDF documents is likely to be limited at first, allowing such disseminators of EDGAR information time to scale up their operations over time. As technology continues to evolve, we believe these transition costs will be outweighed by longer-term benefits. We do not have the data to quantify the costs or benefits of these amendments. We requested comment on the costs and benefits but received no data.

We are providing a month-long test period during which filers may submit test filings which include documents in HTML and PDF format. This test period should provide disseminators with sufficient time to assure completion of system changes to accommodate acceptance of HTML and PDF documents. During the test period, our rules will still require that filers submit live filings entirely in ASCII. Therefore, the operations of the disseminators should not be disrupted during the test period. The test period also will provide filers the opportunity to test the EDGAR system's new features. We considered a further delay in the implementation of the rules we adopted today. However, in balancing the interests of all the affected groups, we do not believe that further delay is warranted.

The rules we adopt today impose no costs related to substantive disclosure because the new EDGAR rules do not substantively change the information and disclosure we currently require. Rather, the rules merely modify and supplement current rules to reflect the expanded filing formats and modes of presentation through which filers may submit information to us electronically.

IV. Analysis of Burdens on Competition, Capital Formation and Efficiency

Section 23(a)(2) of the Exchange Act requires us, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules that we adopt thereunder. Furthermore, Section 2(b) of the Securities Act,[64] Section 3(f) of the Exchange Act,[65] and Section 2(c)[66] of the Investment Company Act require us, when engaging in rulemaking, and considering or determining whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In compliance with our responsibilities under these sections, we requested comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation. We encouraged commenters to provide empirical data or other facts to support their views. We received no comments in response to the above request.

In compliance with our responsibilities under the previously mentioned provisions, we considered whether the amendments would promote efficiency, competition and capital formation. Although filing agents and information disseminators may be disparately affected depending on their technical readiness and programming formats, we believe that the new rules and amendments will not impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the securities laws.

We believe that the new rules and amendments will not have any adverse effect on capital formation. We believe the amendments will promote efficiency by giving investors information in a more readable format and by more closely aligning our technical standards to the industry's. The new rules and amendments apply equally to all entities currently required to file on EDGAR. Because the proposed rules and amendments are designed in part to permit filers to provide information in a format that will be more useful to investors, the amendments are appropriate in the public interest and for the protection of investors.

V. Summary of Regulatory Flexibility Act Certification

Our Chairman has certified, under Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the new rules and rule amendments in this release would not have a significant economic impact on a substantial number of small entities. The certification, documenting the factual basis therefor, was attached to the proposing release as Appendix B. We received no comments on the certification.

VI. Paperwork Reduction Act

The new rules and amendments do not come within the scope of the Paperwork Reduction Act of 1995[67] because the new rules and amendments do not create a new collection of information.[68]

VII. Statutory Basis

We are adopting the new rules and rule amendments outlined above under Sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act, Sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility Act,[69] Section 319 of the Trust Indenture Act of 1939,[70] and Sections 8, 30, 31 and 38 of the Investment Company Act.[71]

List of Subjects

17 CFR Parts 230 and 270

Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Confidential business information, Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28,

[63] We continually attempt to reduce the costs of the EDGAR system and to pass those costs along when possible. For example, in November 1998, under the new EDGAR contract, we were able to effect a cost savings with the implementation of a new privatized dissemination system. This resulted in our passing along a cost savings of nearly $200,000 per year to disseminators when their yearly subscription cost was reduced from $278,000 to $79,686.

[64] 15 U.S.C. 77b(b).

[65] 15 U.S.C. 78c(f).

[66] 15 U.S.C. 80a–2(c).

[67] 44 U.S.C. 3501, *et seq.*

[68] 5 CFR 1320.5(g).

[69] 15 U.S.C. 79a, *et seq.*

[70] 15 U.S.C. 77aaa, *et seq.*

[71] 15 U.S.C. 80a–1, *et seq.*

80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.485 [Amended]

2. By amending § 230.485 by removing paragraph (f)(2) before the Note and redesignating paragraph (f)(1) as paragraph (f).

§ 230.486 [Amended]

3. By amending § 230.486 by removing paragraph (f)(2) before the Note and redesignating paragraph (f)(1) as paragraph (f).

§ 230.487 [Amended]

4. By amending § 230.487 by removing paragraph (d)(2) and redesignating paragraph (d)(1) as paragraph (d).

§ 230.495 [Amended]

5. By amending § 230.495 by removing paragraph (e)(2) and redesignating paragraph (e)(1) as paragraph (e).

§ 230.497 [Amended]

6. By amending § 230.497 by adding a sentence before the last sentence in paragraph (k)(2)(ii) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

* * * * *

(k) * * *

(2) *Filing procedures.* * * *

(ii) * * * Filers may fulfill the requirements of this paragraph by submitting with their definitive form of profile filed electronically under paragraph (k)(1)(ii) of this section an unofficial PDF copy of the profile in accordance with § 232.104 of this chapter. * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

7. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

8. By amending § 232.10 by revising paragraph (b) before the Note to read as follows:

§ 232.10 Application of part 232.

* * * * *

(b) Each registrant, third party, or agent must file in paper format a Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), the uniform application for access codes to file on EDGAR, before beginning to file electronically.

* * * * *

9. By amending § 232.11 by removing all paragraph designations; revising the definition of ''electronic filing,'' and adding the definitions of ''animated graphics,'' ''ASCII document,'' ''disruptive code,'' ''electronic document,'' ''executable code,'' ''HTML document,'' ''hypertext links'' or ''hyperlinks,'' and ''unofficial PDF copy'' in alphabetical order to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Animated graphics. The term *animated graphics* means text or images that do not remain static but that may move when viewed in a browser.

ASCII document. The term *ASCII document* means an electronic text document with contents limited to American Standard Code for Information Interchange (ASCII) characters and that is tagged with Standard Generalized Mark Up Language (SGML) tags in the format required for ASCII/SGML documents by the EDGAR Filer Manual.

* * * * *

Disruptive code. The term *disruptive code* means any active content or other executable code, or any program or set of electronic computer instructions inserted into a computer, operating system, or program that replicates itself or that actually or potentially modifies or in any way alters, damages, destroys or disrupts the file content or the operation of any computer, computer file, computer database, computer system, computer network or software, and as otherwise set forth in the EDGAR Filer Manual.

* * * * *

Electronic document. The term *electronic document* means the portion of an electronic submission separately tagged as an individual document in the format required by the EDGAR Filer Manual.

* * * * *

Electronic filing. The term *electronic filing* means one or more electronic documents filed under the federal securities laws that are transmitted or delivered to the Commission in electronic format.

* * * * *

Executable code. The term *executable code* means instructions to a computer to carry out operations that use features beyond the viewer's, reader's, or Internet browser's native ability to interpret and display HTML, PDF, and static graphic files. Such code may be in binary (machine language) or in script form. Executable code includes disruptive code.

HTML document. The term *HTML document* means an electronic text document tagged with HyperText Markup Language tags in the format required by the EDGAR Filer Manual.

* * * * *

Hypertext links or hyperlinks. The term *hypertext links* or *hyperlinks* means the representation of an Internet address in a form that an Internet browser application can recognize as an Internet address.

* * * * *

Unofficial PDF copy. The term *unofficial PDF copy* means an optional copy of an electronic document that may be included in an EDGAR submission tagged as a Portable Document Format document in the format required by the EDGAR Filer Manual and submitted in accordance with Rule 104 of Regulation S-T (§ 232.104).

10. By amending § 232.101 by revising the note to paragraph (a)(1)(iii) and by removing paragraph (b)(7) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) *Mandated electronic submissions.*

(1) * * *

(iii) * * *

Note to paragraph (a)(1)(iii): Electronic filers filing Schedules 13D and 13G with respect to foreign private issuers should include in the submission header all zeroes (*i.e.*, 00–0000000) for the IRS tax identification number because the EDGAR system requires an IRS number tag to be inserted for the subject company as a prerequisite to acceptance of the filing.

* * * * *

11. By amending § 232.102 by revising paragraph (e) to read as follows:

§ 232.102 Exhibits.

* * * * *

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, any incorporation by reference by a registered investment company or a business development company must relate only to documents that have been filed in electronic format, unless the document has been filed in paper under a hardship exemption (§ 232.201 or 232.202) and any required confirming copy has been submitted.

* * * * *

12–15. By adding §§ 232.104, 232.105 and 232.106 to read as follows:

§ 232.104 Unofficial PDF copies included in an electronic submission.

(a) An electronic submission may include one unofficial PDF copy of each electronic document contained within that submission, tagged in the format required by the EDGAR Filer Manual.

(b) Except as provided in paragraph (c) of this section, each unofficial PDF copy must be substantively equivalent to its associated electronic document contained in the electronic submission. An unofficial PDF copy may contain graphic and image material (but not animated graphics, or audio or video material), notwithstanding the fact that its HTML or ASCII document counterpart may not contain such material but must contain a fair and accurate narrative description or tabular representation of any omitted graphic or image material.

(c) If a filer omits an unofficial PDF copy from, or submits one or more flawed unofficial PDF copies in, the electronic submission of an official filing, the filer may add or resubmit an unofficial PDF copy by electronically submitting an amendment to the filing to which it relates. The amendment must include an explanatory note that the purpose of the amendment is to add or to correct an unofficial PDF copy.

(1) If such an amendment is filed, the official amendment may consist solely of the cover page (or first page of the document), the explanatory note, and the signature page and exhibit index (where appropriate). The corresponding unofficial copy must include the complete text of the official filing document for which the amendment is being submitted.

(2) If the amendment is being filed to add or resubmit an unofficial PDF copy of one or more exhibits, the submission may consist of the following: the official filing—consisting of the cover page (or first page of the document), the explanatory note, the signature page (where appropriate), the exhibit index, and a separate electronic exhibit document for each exhibit for which an unofficial PDF copy is being submitted—and the corresponding unofficial PDF copy of each exhibit document. However, the text of the official exhibit document need not repeat the text of the exhibit; that document may contain only the following legend: RESUBMITTED TO ADD/REPLACE UNOFFICIAL PDF COPY OF EXHIBIT.

(d) An unofficial PDF copy is not filed for purposes of section 11 of the Securities Act (15 U.S.C. 77k), section 18 of the Exchange Act (15 U.S.C. 78r), section 16 of the Public Utility Act (15 U.S.C. 79p), section 323 of the Trust Indenture Act (15 U.S.C. 77www), or section 34(b) of the Investment Company Act (15 U.S.C. 80a-33(b)), or otherwise subject to the liabilities of such sections, and is not part of any registration statement to which it relates. An unofficial PDF copy is, however, subject to all other civil liability and anti-fraud provisions of the above Acts or other laws.

(e) Unofficial PDF copies that are prospectuses are subject to liability under Section 12 of the Securities Act (15 U.S.C. 77*l*).

§ 232.105 Limitation on use of HTML documents and hypertext links.

(a) Electronic filers must submit the following documents in ASCII: Form N-SAR (§ 274.101 of this chapter), Form 13F (§ 249.325 of this chapter), and Financial Data Schedules submitted in accordance with Item 601(c) of Regulation S-K (§ 229.601(c) of this chapter), Item 601(c) of Regulation S-B (§ 228.601(c) of this chapter), or Rule 483(e) (§ 230.483(e) of this chapter). Notwithstanding the foregoing provision, electronic filers may submit exhibits to Form N-SAR in HTML, except for Financial Data Schedules, which filers must submit in ASCII.

(b) Electronic filers may not include in any HTML document hypertext links to sites, locations, or documents outside the HTML document, including links to exhibit documents. Electronic filers may include within an HTML document hypertext links to different sections within that single HTML document.

(c) If, notwithstanding paragraph (b) of this section, electronic filers include hypertext links to external sites within a submission, information contained in such links will not be considered part of the official filing for determining compliance with reporting obligations; however, this information is subject to the civil liability and anti-fraud provisions of the federal securities laws.

§ 232.106 Prohibition against electronic submissions containing executable code.

(a) Electronic submissions must not contain executable code. Attempted submissions identified as containing executable code will be suspended, unless the executable code is contained only in one or more PDF documents, in which case the submission will be accepted but the PDF document(s) containing executable code will be deleted and not disseminated.

(b) If an electronic submission has been accepted, and the Commission staff later determines that the accepted submission contains executable code, the staff may delete from the EDGAR system the entire accepted electronic submission or any document contained in the accepted electronic submission. The Commission staff may direct the electronic filer to resubmit electronically replacement document(s) or a replacement submission in its entirety, in compliance with this provision and the EDGAR Filer Manual.

Note to § 232.106: A violation of this section or the relevant EDGAR Filer Manual section also may be a violation of the Computer Fraud and Abuse Act of 1986, as amended, and other statutes and laws.

16. By amending § 232.302 by revising paragraph (a) to read as follows:

§ 232.302 Signatures.

(a) Required signatures to or within any electronic submission must be in typed form rather than manual format. When used in connection with an electronic filing, the term ''signature'' means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters or characters comprising a name, executed, adopted or authorized as a signature. Signatures are not required in unofficial PDF copies submitted in accordance with Rule 104 of Regulation S-T (§ 232.104).

* * * * *

17. By amending § 232.303 by revising paragraph (a)(3) to read as follows:

§ 232.303 Incorporation by reference.

(a) * * *

(3) For a registered investment company or a business development company, documents that have not been filed in electronic format, unless the document has been filed in paper under a hardship exemption (§ 232.201 or 232.202 of this chapter) and any required confirming copy has been submitted.

* * * * *

18. By amending § 232.304 by revising the section heading, paragraphs (a) and (b) and the first sentence of paragraph (c) to read as follows:

§ 232.304 Graphic, image, audio and video material.

(a) If a filer includes graphic, image, audio or video material in a document delivered to investors and others that may not, in accordance with the requirements of the EDGAR Filer Manual, be reproduced in an electronic filing, the electronically filed version of that document must include a fair and accurate narrative description, tabular representation or transcript of the omitted material. Such descriptions, representations or transcripts may be included in the text of the electronic filing at the point where the graphic, image, audio or video material is

presented in the delivered version, or they may be listed in an appendix to the electronic filing. Immaterial differences between the delivered and electronically filed versions, such as pagination, color, type size or style, or corporate logo need not be described.

(b)(1) The graphic, image, audio and video material in the version of a document delivered to investors and others is deemed part of the electronic filing and subject to the civil liability and anti-fraud provisions of the federal securities laws.

(2) Narrative descriptions, tabular representations or transcripts of graphic, image, audio and video material included in an electronic filing or appendix thereto also are deemed part of the filing. However, to the extent such descriptions, representations or transcripts represent a good faith effort to fairly and accurately describe omitted graphic, image, audio or video material, they are not subject to the civil liability and anti-fraud provisions of the federal securities laws.

(c) An electronic filer must retain for a period of five years a copy of each publicly distributed document, in the format used, that contains graphic, image, audio or video material where such material is not included in the version filed with the Commission.

* * *

* * * * *

19. By amending § 232.305 by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

(a) * * *

(b) Paragraph (a) of this section does not apply to HTML documents.

20. By amending § 232.306 by revising paragraph (b) to read as follows:

§ 232.306 Foreign language documents and symbols.

(a) * * *

(b) Foreign currency denominations must be expressed in words or letters in the English language rather than representative symbols, except that HTML documents may include any representative foreign currency symbols that the EDGAR Filer Manual specifies. The limitations of this paragraph do not apply to unofficial PDF copies submitted in accordance with Rule 104 of Regulation S–T (§ 232.104).

21. By amending § 232.307 by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 232.307 Boldface type.

(a) * * *

(b) Paragraph (a) of this section does not apply to HTML documents.

22. By revising § 232.310 to read as follows:

§ 232.310 Marking changed material.

Provisions requiring the marking of changed materials are satisfied in ASCII and HTML documents by inserting the tag <R> before and the tag </R> following a paragraph containing changed material. HTML documents may be marked to show changed materials within paragraphs. Financial statements and notes thereto need not be marked for changed material.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

23. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2,77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

24. By amending Form S–6 (referenced in § 239.16) by removing Instruction 5 of Instructions as to Exhibits.

Note—The text of Form S–6 and the amendments will not appear in the Code of Federal Regulations.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

24a. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

25. By amending § 240.14a–101 by removing paragraph (a)(4) of Item 22.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

26. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

* * * * *

27. By amending § 270.8b–23 by revising paragraph (a) to read as follows:

§ 270.8b–23 Incorporation by reference.

(a) Any registrant may incorporate by reference, in answer or partial answer to any item of a registration statement or report, any information contained elsewhere in the statement or report or any information contained in any other statement, report or prospectus filed with the Commission under any Act administered by it, so long as a copy of the other statement, report or prospectus is filed with each copy of the registration statement or report in which it is incorporated by reference. In the case of a registration statement, report, or prospectus filed in electronic format, the registrant need not file a copy of the document incorporated by reference if that document also was filed in electronic format. A registrant may incorporate by reference matter contained in an exhibit, however, only to the extent permitted by §§ 270.8b–24 and 270.8b–32. A registrant may not incorporate by reference a Financial Data Schedule.

* * * * *

28. By amending § 270.8b–32 by revising paragraph (c) to read as follows:

§ 270.8b–32 Incorporation of exhibits by reference.

* * * * *

(c) *Electronic filings.* (1) A registrant may incorporate by reference into a registration statement or report required to be filed electronically only exhibits that have been filed in electronic format, unless the exhibit has been filed in paper under a hardship exemption (§ 232.201 or 232.202 of this chapter) and any required confirming copy has been submitted.

(2) Notwithstanding paragraph (c)(1) of this section, a registrant may not incorporate by reference a Financial Data Schedule.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

29. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

30. By amending Form N–SAR (referenced in § 274.101) by revising General Instruction F to read as follows:

Note—The text of Form N–SAR and the amendments will not appear in the Code of Federal Regulations.

Instructions and Form

FORM N–SAR

SEMI-ANNUAL REPORT

FOR REGISTERED INVESTMENT COMPANIES

* * * * *

GENERAL INSTRUCTIONS

* * * * *

F. Filings on EDGAR

(1) Attention is directed to Sub-Item 77Q1 (Exhibits) for certain items of financial information that are required (Financial Data Schedule).

(2) Management investment companies must file Form N–SAR electronically by direct electronic transmission only, and in accordance with the EDGAR Filer Manual. Filing of the form on magnetic tapes or diskettes is not permitted.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

Note—The text of Forms N–2, N–1, N–1A, N–3, N–4 and N–5 and the amendments will not appear in the Code of Federal Regulations.

31. By amending Form N–2 (referenced in §§ 239.14 and 274.11a–1) by removing General Instruction I and redesignating General Instruction J as General Instruction I and removing paragraph 2.r of Item 24 of Part C.

32. By amending Form N–1 (referenced in §§ 239.15 and 274.11) by removing General Instruction H and paragraph (b)(16) to Item 1 of Part II.

33. By amending Form N–1A (referenced in §§ 239.15A and 274.11A) by removing paragraph (n) of Item 23 and by redesignating paragraph (o) of Item 23 as paragraph (n).

34. By amending Form N–3 (referenced in §§ 239.17a and 274.11b) by removing General Instruction J and paragraph (b)(17) to Item 28 of Part C.

35. By amending Form N–4 (referenced in §§ 239.17b and 274.11c) by removing General Instruction J and paragraph (b)(14) to Item 24 of Part C.

36. By amending Form N–5 (referenced in §§ 239.24 and 274.5) by removing General Instruction H and Instruction 13 to Instructions as to Exhibits.

Dated: May 17, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12811 Filed 5–20–99; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–7685; 34–41411; 35–27026; 39–2373; IC–23844]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting an updated edition of the EDGAR Filer Manual and is providing for its incorporation by reference into the Code of Federal Regulations. Beginning June 28, 1999, we will be able to accept filings submitted to EDGAR in HyperText Markup Language (HTML) in addition to documents submitted in the current American Standard Code for Information Interchange (ASCII) format; filers also will have the option of accompanying their required filings with unofficial copies in Portable Document Format (PDF). Beginning May 24, 1999, and continuing through June 25, 1999 (the test period), filers may submit test filings that include documents in HTML and PDF format; filers electing to submit test HTML and/or PDF documents during the test period must do so in accordance with the new rule provisions.

EFFECTIVE DATE: The amendment to 17 CFR part 232 (Regulation S–T) will be effective on June 28, 1999. The new edition of the EDGAR Filer Manual (Release 6.50) will be effective on June 28, 1999. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of June 28, 1999.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, Michael E. Bartell at (202) 942–8800; for questions concerning investment company filings, Ruth Armfield Sanders, Senior Counsel, Division of Investment Management, at (202) 942–0633; and for questions concerning Corporation Finance company filings, Margaret R. Black, EDGAR Specialist, at (202) 942–2933.

SUPPLEMENTARY INFORMATION: Today we are adopting an updated EDGAR Filer Manual (''Filer Manual''), which describes the technical formatting requirements for the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.[1] Filers must comply with the provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[3]

The purpose of this new version of EDGAR and the Filer Manual (Release 6.50) is to modernize EDGAR, making the system easier for filers to use and documents more attractive and readable for the users of public information.[4] Beginning June 28, 1999, filers will be able to submit most filings to us in HyperText Markup Language (HTML), in addition to the currently acceptable text-based American Standard Code for Information Interchange (ASCII) format. Filers may also submit unofficial copies of filings in Portable Document Format (PDF). Test filings using these new features may be made beginning May 24, 1999.

We are also amending Rule 301 of Regulation S–T to provide for the incorporation by reference of the Filer Manual into the Code of Federal Regulations, which incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The revised Filer Manual and the amendment to Rule 301 will be effective on June 28, 1999.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission,

[1] The Filer Manual originally was adopted on April 1, 1993, and became effective on April 26, 1993. Release No. 33–6986 (Apr. 1, 1993) [58 FR 18638]. The most recent update to the Filer Manual was implemented on June 1, 1998. *See* Release No. 33–7539 (May 28, 1998) [63 FR 29104].

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[3] *See* Release Nos. 33–6977 (Feb. 23, 1993) [58 FR 14628], IC–19284 (Feb. 23, 1993) [58 FR 14848], 35–25746 (Feb. 23, 1993) [58 FR 14999], and 33–6980 (Feb. 23, 1993) [58 FR 15009] for a comprehensive treatment of the rules adopted by the Commission governing mandated electronic filing. *See also* Release No. 33–7122 (Dec. 19, 1994) [59 FR 67752], in which the Commission made the EDGAR rules final and applicable to all domestic registrants; Release No. 33–7427 (July 1, 1997) [62 FR 36450], adopting the most recent minor amendments to the EDGAR rules; Release No. 33–7472 (Oct. 24, 1997) [62 FR 58647], in which the Commission announced that, as of January 1, 1998, it would not accept paper filings required to be filed electronically; and Release No. 34–40935 (Jan. 12, 1999) [64 FR 2843], in which the Commission made mandatory the electronic filing of Form 13F.

[4] On March 10, 1999, we issued a release proposing amendments and new rules to reflect initial changes to filing requirements resulting from EDGAR modernization, as well as certain other changes to clarify or update the rules. Rulemaking for EDGAR System, Release Nos. 33–7653; 34–41150; IC–23735 (Mar. 10, 1999) [64 FR 12908]. These amendments have been adopted (Release No. 33–7684 (May 17, 1999)).

450 Fifth Street, N.W., Washington, D.C. 20549–0102. Electronic format copies will be available on the EDGAR electronic bulletin board and posted to the SEC's Web Site. The SEC's Web Site address for the Manual is http://www.sec.gov/asec/ofis/filerman.htm. You may also obtain copies from Disclosure Incorporated, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.[5] It follows that the requirements of the Regulatory Flexibility Act[6] do not apply.

Statutory Basis

We are adopting the amendment to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act,[7] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[8] Section 20 of the Public Utility Holding Company Act of 1935,[9] Section 319 of the Trust Indenture Act of 1939,[10] and Sections 8, 30, 31, and 38 of the Investment Company Act.[11]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Investment companies, Registration requirements, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Electronic filings must be prepared in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The June 1999 edition of the EDGAR Filer Manual: Guide for Electronic Filing with the U.S. Securities and Exchange Commission (Release 6.50) is incorporated into the Code of Federal Regulations by reference, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0102 or by calling Disclosure Incorporated at (800) 638–8241. Electronic format copies are available through the EDGAR electronic bulletin board and posted to the SEC's Web Site. The SEC's Web Site address for the Manual is http://www.sec.gov/asec/ofis/filerman.htm. Information on becoming an EDGAR E-mail/electronic bulletin board subscriber is available by contacting CompuServe Inc. at (800) 576–4247.

Dated: May 17, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12812 Filed 5–20–99; 8:45 am]

BILLING CODE 8010–01–U

[5] 5 U.S.C. 601–612.

[6] 5 U.S.C. 553(b).

[7] 15 U.S.C. 77f, 77g, 77h, 77j and 77s(a).

[8] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w and 78*ll*.

[9] 15 U.S.C. 79t.

[10] 15 U.S.C. 77sss.

[11] 15 U.S.C. 80a–8, 80a–29, 80a–30 and 80a–37.

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S. 453/P.L. 106–27

To designate the Federal building located at 709 West 9th Street in Juneau, Alaska, as the ''Hurff A. Saunders Federal Building''. (May 13, 1999; 113 Stat. 52)

S. 460/P.L. 106–28

To designate the United States courthouse located at 401 South Michigan Street in South Bend, Indiana, as the ''Robert K. Rodibaugh United States Bankruptcy Courthouse''. (May 13, 1999; 113 Stat. 53)

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